United States Court of Appeals

for the Second Circuit

APPELLEE'S APPENDIX

76-6072

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6072

B

In the Matter

—of—

WILLIAM ROBERT KLEIN a/k/a WILLIAM R. KLEIN,
An Attorney,

WILLIAM ROBERT KLEIN,
Appellant,

DAVID N. EDELSTEIN Chief Judge, U.S.D.C., S.D.N.Y.,
Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FILED
1976

APPELLEE'S ADDENDUM

ROBERT B. FISKE, JR.,
United States Attorney for the Southern District of New York,
Attorney for Respondent.

SAMUEL J. WILSON,
Assistant United States Attorney,
Of Counsel.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter

of

WILLIAM R. KLEIN

New York, N. Y.

January 16, 1976

Before

HON. DAVID N. EDELSTEIN,

Chief Judge

APPEARANCE:

MR. WILLIAM R. KLEIN,
Pro Se

- - -

THE CLERK: Mr. Klein, are you ready?

THE COURT: Mr. Klein, this hearing is being brought because, as you will --

MR. KLEIN: May I suggest your Honor speak a little louder?

THE COURT: Do you have a hearing deficiency?

MR. KLEIN: I don't think so, but I can't say that I can hear you. I suggest it to you.

THE COURT: Would you come closer, then?

This hearing is being accorded to you because, as you well recall, pursuant to Local Rule 5(d) of the General Rules of this Court, you, William Robert Klein suffered automatic disbarment from the bar of the United States District Court for the Southern District of New York.

This is your opportunity to be heard. You may make any statement you wish, any argument you choose in connection with this hearing. This is your opportunity to be heard fully and completely.

I have studied your papers. I am aware of your contentions. Your statements and my statements are being recorded.

Who is this?

MR. KLEIN: He is an attorney and a friend.

THE COURT: YOu certainly ought to, at the very

outset indicate that you understand something of our procedure.

MR. KLEIN: Of course, I do.

THE COURT: Does he represent you?

MR. KLEIN: No, not in this proceeding. This is a pro se proceeding entirely.

THE COURT: All right.

MR. KLEIN: He is there merely to assist me with some papers; that's all.

THE COURT: Proceed.

MR. KLEIN: If the Court please, this matter first came to your Honor's attention within his disciplinary jurisdiction as the Chief Judge in or about September of 1974. Since that time, I have made various presentations to your Honor, since I was served with an order, an ex parte order of disbarment, which your Honor has referred to as an automatic order.

That order, I think, was dated September 25, 1974.

Since that time, I have been repeatedly asking for an opportunity to be heard, on the theory and on the ground that that order had been obtained, in the first instance, by a failure on the part of the person who was spurring on the situation to disclose the material facts. I felt at the time, and I so stated in the various corres-

pondence exchanged between the Court, the Court's chambers, and myself, that if the Court had known of the material facts to which I shall now make reference once again, that the Court might not have acted so automatically or hastily in the situation.

I say nothing here now in criticism. I am simply trying to recapitulate the whole situation, because this matter is now for myself lying dormant, with the exception of these intermittent exchanges, for the year, with great injury, if I may say so, to myself in the interim, and I feel that if your Honor is now inviting a complete recapitulation of the matter, that I welcome the opportunity --

THE COURT: What do you mean by a complete recapitulation?

MR. KLEIN: Well, I mean involving the entire history of the matter to which your Honor responded unconsciously, unwittingly or otherwise, when the matter came on before your Honor by reason of a letter, as I understand, accompanied by an exemplified copy of a State Court judgment addressed to your Honor, signed by o..e Irving Solkin, the Clerk of the District Court of the Appellate Division, which was the judgment issuer in the first instance.

At the time that your Honor received this exemplified copy of the entry of judgment, or the judgment which was

entered on June 29th of 1965, your Honor had nothing before him, so far as I understand, except that letter together with the enclosure of the exemplified copy, and your Honor acted in accordance with the prima facie terms of the Rule 5(d), to which I will sooner or later address myself, with your Honor's leave.

That judgment had been entered on June 29th of 1965, and your Honor was called upon to act in September of 1974.

In my opinion, that put the Court on notice in the first instance that there was something irregular, or might be something irregular in the call upon the Court to now make some kind of an automatic entry of a disciplinary order in this court, discontinuing a membership at the bar, which, if my recollection recalls, has served me since 1926.

At the time that your Honor was receiving this notice from the Clerk of the Appellate Division, there were also issued from the same source similar notice, or exactly similar notice, in the Eastern District of New York, United States District Court, and also in the District Court of the District of Columbia, where I happen also to be a member of that bar.

So as I stand before your Honor now, I am a member of the bar of the District of Columbia; I am a member of the

bar of the Eastern District of New York, and I am subject to an outstanding judgment dated June 29, 1965, which firstly on its face is void for failing to recite the requirements that the State statute governing judgments and governing the definition of judgments would prescribe as necessary within the body of the judgment.

I shall go into that a little later, if your Honor please.

The reason that that discrepancy or apparent disparity exists is not only in the fact that your Honor was so, if I may use the term, handed this exemplified copy of the judgment by mail, even as I received the very State Court judgment by mail, without any prior notice, essential notice of charge, and without any hearing on any charge.

It was purely and literally a mail order disbarment, if I may use that phrase.

All this sounds rather unique. I have referred to this as a sui generis matter, and it is almost incredible and certainly shocking to anyone who hears it, and in the statement of which I am also believed to be somewhat out of order, and the more shocking it sounds, the more I seem to be out of order, but I promise your Honor here today that before your Honor completes this hearing your Honor will receive in manner similar to what the Chief District Judge

of the Eastern District had received, beginning in September of 1965, when this identical judgment was delivered to him for ordinary disciplinary practice, even as it was delivered to you. And as I stand before you now, so I stood before him, and I said, "Your Honor, this judgment is void, not only on its face, but was obtained without any prior hearings on any charge and without essential notice in the first instance.

The Hon. Joseph C. Zavatt, then the Chief Judge of that court, became irate; he couldn't believe that such a thing had happened, and warned me at my peril that there would be an investigation of my allegations, and so he appointed the United States Attorney, at that time the Hon. Joseph P. Hoey, acting through Hon. Vincent T. McCarthy, his chief assistant -- both very estimable gentlemen.

I stated to the judge that I would be delighted to have such an investigation, and that investigation took well nigh three years. So three years of my life were appended, awaiting on that investigation.

There is on file now in the Eastern District a copy of that report, dated September 9, 1968. The judgment had been entered three years before, and immediately upon the entry of the judgment, the Clerk of that Court, or the prosecution, acting on behalf of the Appellate Division,

Second Department, sought to get this disbarment of equal measure in the Federal Court.

The United States Attorney filed his report. Judge Zavatt disqualified himself, though under the rule he would be in charge of disciplinary proceedings, and that proceeding was taken over by Judge Dooling, at my request. He was sitting there at the time, and I felt that perhaps he should proceed.

I made a motion to dismiss the proceedings on the ground that the predicate of that application was a State Court judgment which was void in all respects, as I have mentioned to you.

The U. S. Attorney made his report, which is on file in the court in the action over there, numbered Misc. 811.

Thereupon, I stood before Judge Dooling acting in behalf and in place of the Chief Judge for perhaps such an inquiry of six hours, three in the morning and three in the afternoon.

The entire proceeding had before it, of course, the report made by the U. S. Attorney. That report not only gave an extended recital of each and every step which had taken place, which is unnecessary for me, I think, at this point, to make part of this recapitulation -- it not only

contained each and every step enumerated, dated and explained, showing that there had been no notice of hearing or charges -- no notice -- essential notice of charge and no hearings on any charge, and, as I recall, on pages 30, 31, 32 and 33 of that report, your Honor, he recommended that, there being no constitutional predicate for this hearing, he could not proceed to recommend any judgment of disbarment or discipline based upon it.

I should say, Judge, without fear of contradiction -- I have made some research on the point, but I am not certain I covered the entire gamut of history -- that since 1735 in the legal annals of New York, Colonial as well as State history, there has never been a case where a lawyer has lost his license without a hearing in advance of the issuance of the discipline.

Your Honor can well understand now why during this period of a year I have been more or less plying chambers with some calls. Some intervals of months passed after I found that I wasn't getting the immediacy of response which I had hoped for, because it was an interruption in my career, and I trust that in all that effort your Honor will forgive the energy that I showed in that direction.

In addition to the investigation made by the U. S. Attorney -- and I say it all centers around the fact

that there was no notice, essential notice, and no hearing on any charges whatsoever.

Oh, yes, they came up with hearings later, which they offered me, to which I refused to be a party.

I notice that today, in the New York Law Journal, on the front page -- and I think it was a decision made by the Appellate Division -- I have it here -- that decision -- no, no, I beg your pardon. It was in this Court -- made by a three-judge bench, your Honor, a constitutional court, which held that attempts to convict or attempts to punish in advance of any hearing and without due notice, were a denial of due process, and they declared unconstitutional sections of the State acts, I think from 750 to 762 or so, with intermittent omissions, declaring that those acts are unconstitutional -- they have been stand-bys of the New York State practice for years, the principles regarding holding an individual in contempt or an individual failing to comply with the rules of the court in connection with a creditor-debtor relationship.

There were other investigations made, because, naturally, I couldn't rest under this unprecedented show of force by a State Court, and so I welcomed an opportunity of investigation presented to me by a member of the firm -- an associate of that firm, of Winthrop, Stimson, Roberts

and Putnam, a Mr. Grashof, who lent his services for a period of two years, voluntarily. He then became a member of the Superior Courts Committee of the Bar Association. He made his report. He had been in close contact with me to get all the facts, and he made a report.

I never heard any more about that after he told me that everything seemed to be in order.

He had been shocked by the situation and therefore undertook the investigation as a volunteer.

The president of the Bar Association, Orville P. Shell, having had the matter called to his attention under circumstances where he and Whitney North Seymour and others, having formed a committee to improve the administration of justice, held themselves out as being willing to receive complaints, and so they received my complaint and the complaint of another individual, who had been a victim in certain litigation, and Orville P. Shell spent a very considerable length of time while he was the president and also perhaps chairman or head of the Committee to Improve the Administrationof Justice, and in our conversations I can only say to you that he said he was sorry he could not help me but never once denied a single allegation such as in the nature of which I am making now.

Whitney North Seymour, after retiring from the

office of the United States Attorney in Manhattan, was open for retainers, and I don't think that I violate a confidence, and I think the situation here warrants my stating that he said -- he had a long talk with me first on the phone, being willing in a most unusual way to hear the whole matter from me without my having to visit him, and he hung on, to my great surprise, and he heard the entire story, believed it was shockingly incredible and came back to me with the report that he was not going to take the case but that he found he could get a reinstatement for me but that I would have to resign immediately.

I expressed my sense of shock that he should have been the vehicle of that kind of report.

THE COURT: I think it would be more desirable if you would really target the main problem that you see rather than by spending a great deal of time discussing these collateral matters. You must be sure that that has absolutely nothing to do with the matter.

MR. KLEIN: If your Honor please --

THE COURT: If you think you want to consume the time, I am patient enough to do it, but I think in your own interest that you ought to deal with the real problems involved, as you see them.

I am not, frankly, concerned about your conversa-

tions with Mr. Whitney North Seymour or his impressions or his views or, for that matter, Mr. Shell's. They have nothing to do with this problem whatsoever, whatever their opinion is.

MR. KLEIN: I have already --

THE COURT: Do it your own way. I am trying to guide you.

MR. KLEIN: I am delighted to accept your guidance.

THE COURT: Let's come to grips with the point.

MR. KLEIN: It seems to me that coming to grips with this matter is that you know there was no hearing before any conviction and that the judgment itself makes no reference to any hearing had or trial had resulting in the conviction, and that whatever charges or hearings there were came after the entry of judgment.

I think that that is the constitutional involvement of this matter, and I think that having said that, I was entitled, perhaps to go a little afield, without necessarily being irrelevant, as a way of dramatizing the unprecedented nature of this sui generis disbarment.

For that reason alone, I mentioned it, and I should normally understand that what other people have told me would be hearsay and be entirely out of order but not in this case, where I have been knocking against the walls,

knocking at the walls and the doors of justice and the administration of justice for a long time, and I have only been met with refusals to make an investigation of the allegations.

Your Honor has had this matter for perhaps a year, and I am left here at a disadvantage of not knowing to what extent your Honor has already made his own independent study so as to guide me in how I may make my time here useful.

I would be delighted to submit to any questions which your Honor has to put to me.

THE COURT: The first question I have is what transpired in the District of Columbia, and what was the outcome? Are you a member in good standing in the District of Columbia?

I only raise that question because you made mention of it.

MR. KLEIN: Yes. I have never heard in any way -- and Mr. Solkin, the clerk who communicated with you, told me in happier days between us that there was no response whatever from them, and they couldn't locate the membership at the bar which I had received in 1955 after taking three days of independent examinations for that admission.

THE COURT: Are you aware that your application for reinstatement in New York's State Bar was denied

yesterday afternoon without opinion?

MR. KLEIN: I am sorry, but I didn't hear the latter part of your statement.

THE COURT: That your motion for reinstatement to the New York Bar was denied yesterday without opinion.

MR. KLEIN: Was denied yesterday? I didn't know it, Judge. If that has anything to do with the matter, I didn't know. I think that that is an entirely collateral matter, if your Honor please.

Let me say this to you with regard to that denial, if it occurred, and I have previously asked for a compromise, and I did that all upon the invitation of the Court, bearing in mind, as I told the Court, that I have federal actions pending in the Eastern District, with respect to the vacation of this judgment, based on constitutional grounds, under the denial of civil rights section, and so on, and that this application for reinstatement was made subject to, and without prejudice, to those proceedings.

I can only say to you that I'm surprised because I have been given erroneously to believe that that reinstatement would be acceptable, and if your Honor wants particulars, which themselves are collateral matters, I should be delighted to support what I said, otherwise

I will forget the matter in this presentation.

Your Honor has informed me, and I'd like to have any other questions your Honor would care to put to me.

THE COURT: What I would like you to do now for my purposes is to summarize and state as succinctly and as specifically as you can what your grounds are in support of your application to vacate the order of this Court.

MR. KLEIN: As I understand Rule 5(d), it calls upon some kind of responsive action on the part of the federal courts upon its receiving evidence of disciplinary action in the state court.

The admission to the bar of the federal court being, in the first instance, predicated or dependent upon a prior admission in the state court.

However, the authorities hold that whatever may be the reason for the discipline in the state court, that that, upon challenge, must be supported upon a prosecution in the federal court.

The case known as In Re Theard held that specifically, that the admission, while necessary, the admission in the state court, while necessary to an admission in the federal court, does not thereafter become the dependent factor for any discipline in the federal court. In other

words, upon a challenge of the discipline of the state court the federal court is required to grant a hearing and not be bound by the judgment of discipline of the state court.

THE COURT: I understand you to mean that even though the action taken in the state court and the judgment disbarring you in that court were to be found to be constitutionally viable and effective, and not in deprivation of any of your due process, that this would still not be a predicate or a reason for this Court to disbar you in --

MR. KLEIN: I think your Honor misunderstood me.

THE COURT: Apparently I did. That is why I have asked you to summarize and state specifically --

MR. KLEIN: I am saying that the discipline in the state court, when challenged in the federal court upon an attempt to discipline the individual in the federal court, and challenged successfully on constitutional grounds or on the grounds recited in Rule 5(d), may not be given the respect which it would otherwise be entitled to.

There was a case, your Honor, that was just handed down a short time ago --

THE COURT: Can you give me specifically the reasons that you urge in support of your application for this Court to vacate its judgment?

MR. KLEIN: I have stated them.

THE COURT: What are they?

MR. KLEIN: I'll be glad to repeat it.

THE COURT: Please do.

MR. KLEIN: I said, number one, the judgment on its face is void and therefore entitled to no respect in the federal court and entitled to no respect in any court, state or federal.

THE COURT: Why do you say that judgment is void on its face?

MR. KLEIN: Because 5011 CPLR defines what a judgment shall recite, and there is no recital in this judgment of any hearing had or conviction based upon such a hearing.

THE COURT: When you say "no hearing," do you mean a hearing that was insufficient or --

MR. KLEIN: No, no, I am literally speaking, your Honor, about a hearing not had before entry of judgment.

THE COURT: You mean you weren't given an opportunity for a hearing?

MR. KLEIN: Of course not. I said it was a surprise mail order judgment.

THE COURT: What about the hearing that you were

afforded before Judge Hart when you refused to participate in that hearing and you left?

MR. KLEIN: I gather that your Honor is more familiar than I had thought at the beginning, and I'd be glad to meet a familiar mind on the subject.

THE COURT: Why don't you assume that I am not familiar with anything. This is your opportunity. You are not going to get another one, Mr. Klein. I want you to give me as specifically and as succinctly as you what what your reasons are, the basis for your arguments, whatever they may be, to persuade this Court to change its judgment.

MR. KLEIN: Number one --

THE COURT: The judgment is insufficient on its face?

MR. KLEIN: Since your Honor seems to know something of the proceedings, which I didn't realize, I now must take you from the beginning of the proceedings which brought on this prosecution and judgment.

THE COURT: It would seem to me it should have worked the other way, if you assumed that I wasn't familiar at all with these proceedings that should have been the reason for keeping me as well informed as you could. Now that I am somewhat informed about the proceeding, why do

you think that you have to go --

MR. KLEIN: Because I think that in the meantime -- in the interim of these proceedings your Honor may have gotten some false impression.

THE COURT: Let's see if you and I can come to an understanding. I am not going to be here -- do you have any hearing infirmity?

MR. KLEIN: Your Honor, I want to pay the utmost respect to your Honor and I want to hear you well.

THE COURT: I am not going to be here all night. It is now five after four.

Please sum up, give me as specifically as you can your best reasons and your best arguments in support of your application.

MR. KLEIN: This prosecution started in the judicial inquiry on professional conduct, which was brought into existence by a chartering order on December 19, 1962. The proceedings began in '63, and they came before a body which had no jurisdiction whatever over investigation of judges, and so my application to have the order which authorized that hearing directed to the investigation of judges was made and granted by the presiding judge, Edward G. Baker, Supreme Court judge.

Thereafter, with no jurisdiction in the judicial

inquiry on professional conduct, and with no report to my knowledge ever issuing, which is a prerequisite under that chartering order creating the judicial inquiry, I suddenly found myself confronted with charges. One of those charges on which I was found guilty on June 20, 1965, was never included in the petition, and it was really the only charge which in those days was being bruited about as the basis for any prosecution.

The matter went to the Court of Appeals, and they, violating its own rules twice prior to that having been laid down in the Delilo case and in the Saravan case -- that was Judge Sorenson of the District Court of Suffolk County.

In those cases the Court of Appeals held that whenever an attorney is convicted, found guilty of charges, and one of them is set aside on appeal, the entire matter goes back for reassessment of penalty. That was denied me all the way through. That was unconstitutional by the standards of the Court of Appeals.

Thereafter, hearings were held and I was given an opportunity to appear, and I said I'd be delighted to appear before you, Honorable Justice Hart, if I am first cleared of the judgment which was obtained against me and which casts a cloud over my entire credibility before I

have a chance to present any evidence.

Notwithstanding my withdrawal from that hearing before Judge Hart, where he said he was powerless to do anything and he was bound to go ahead with the order of the parent court, the Appellate Division, three or four of those seven remaining charges were thrown out by the judge on his own motion or on the recommendation of the district attorney,who couldn't support them. I think there were some that were divided in two parts. And thereupon I asked for also a dismissal of the charges on the ground that there was no jurisdiction, but I also asked for reassessment. They would then have had to vacate that judgment, and if they had vacated the judgment I would then have had an opportunity to have reassessment or to ask that the whole matter be reopened and I would then have my hearings, to which I was most anxious for availability.

As that judgment stands now, dated June 29, 1965, your Honor, four or five of the original charges upon which the judgment is based are absent, have been dismissed, and so I still stand disbarred on the basis of the original judgment, with eight or nine allegations of guilt found.

All that is before the federal court at this time in Brooklyn, before the Eastern District. The

judgment itself was served by mail at a time when there was a motion pending by me in demurrer on eleven grounds cited, and on which I never got a disposition except to say the court had jurisdiction, and those eleven grounds were ignored, and I suddenly found myself charged with having failed to answer and therefore to be disbarred.

The law of the State of New York is -- there was recently a three-man constitutional court in Brooklyn at which Judge Rifkind appeared on behalf of one of the disciplined applicants for constitutional recourse which was presided over by Circuit Court Judge Moore and Judge Neaher and Judge Weinstein, of the District Court.

They were passing upon this question which I am not submitting to your Honor, as to the relevancy and the necessity of reference hearings before any conviction.

In my case there was never any reference -- in those cases they had reference, and I had been invited by Judge Neaher at that time to attend that meeting of the judges and that case when it was heard.

The charges -- Section 90 of the Judiciary Law is specific, and it was on that basis, incidentally, that the Honorable Joseph P. Hoey, the U. S. Attorney, recommended the dismissal or non-prosecution from his

office. Section 90 of the Judiciary Law states specifically that before any discipline may issue, any order of discipline, there must be hearings. We have never had them. It's that judgment to which I am directing my attention, I am not directing my attention to anything else.

If that judgment is vacated I will submit,and I have said to the court in Brooklyn, in the Appellate Division, I'll be glad to submit to any charges whatsoever, and I think they owe a duty tothe law, to the statute, that I shall have a clear coasting on my credibility if I go before any hearing, clear of that judgment which has never been constitutionally based.

I think that I have substantially summed up the grievance that I have on the federal basis under Rule 5(d).

THE COURT: Is it clear, then, that your major thrust of your argument is that you were not accorded a hearing because the original judgment was not vacated? Is that the real --

MR. KLEIN: No, no, no. I was accorded a hearing with the judgment standing. There is no question that the judgment itself --

THE COURT: You say that the judgment should have been vacated.

MR. KLEIN: That is an argument that I used in the state court. But I say my basic proposition is, and that was the proposition that the United States Attorney emphasized, that in the absence of hearings before entry of judgment, the judgment is void, lacking due process.

I think, and I tried to give that at the beginning, I thought that that would be sufficient for the purpose of my claim, if I cannot prevail on the right of having that judgment set aside so that if any charges are to be brought, and I invited the Appellate Division to renew charges against me, any charges which they may now have or then had, and I'll be glad to face them, but I will not face them with a cloud of credibility against me.

I saw in today's Law Journal there was a case which dramatically emphasized that unless there are hearings before the particular conviction in mind, or the particular punishment, those punishments and those penalties are unconstitutional and must be set aside.

It may very well be if your Honor gives me an opportunity I may have omitted something which I think might justly belong to the summary your Honor is asking for, but I say this, that in any event, I think it requires no extended deliberation, assuming I am correct on the facts, and your Honor has done me the honor of asking me to appear

ex parte, although originally your Honor was going to make this a matter of notice, and I appreciate it immensely, however late that the opportunity was given me to have this ex parte hearing. It was a compliment, I felt to me pro tem, and I should like at this opportunity, your Honor, to thank you for giving me this hearing, to have come to me now for my opportunity to answer anything that may disturb this Court, which by any act I may have overlooked.

THE COURT: Did you indicate that there was a case pending in the Eastern District?

MR. KLEIN: What we have there, Judge --

THE COURT: Do you have the docket number?

MR. KLEIN: 74 CR. 1163.

THE COURT: Can you tell me briefly the nature of that case?

MR.KLEIN: Setting forth these allegations that I have given you here in substance, with perhaps some more detail. But centrally showing that there was no jurisdiction in the first place by state law for the institution of the prosecution, and no hearing had at any time, and no notice, essential notice, prior to the entry of judgment, that I asked that under the 1983, your Honor, civil rights law, plus the fact that the judgment itself

being void on its face, I was entitled under a case named Simon against Southern Railway, I was entitled to have injunctive relief which I asked for in that court against its further circulation.

THE COURT: You say that that case is pending?

MR.KLEIN: That case is now out to be resumed after a period of conferences with regard to settlement with the Appellate Division, Second Department.

If, as your Honor now informs me, that motion was denied, which was for reinstatement not on the merits --

THE COURT: What about the Eastern District case? Do you say that that is a case that is pending?

MR. KLEIN: Of course.

THE COURT: Wasn't that case dismissed on April 29, 1975?

MR.KLEIN: Yes, and it was again dismissed on June or July by successive Judges Neaher and Weinstein, each of whom disqualified himself --

THE COURT: How is it pending now?

MR. KLEIN: Because they disqualified themselves, and the Attorney General and I have agreed that the disqualifications were retroactive and, therefore, any dispositions made were to be disregarded.

THE COURT: When you say "the Attorney General,"

whom do you mean?

MR. KLEIN: The State Attorney General.

THE COURT: What effect does the State Attorney General's agreement with you have upon a case pending in the Eastern District which you have acknowledged was dismissed?

MR. KLEIN: I didn't acknowledge it was dismissed.

THE COURT: You say it wasn't dismissed?

MR. KLEIN: No. I say those cases were dismissed -- no, one was not dismissed. This particular case before Judge Neaher, where he suffered his disqualification before any steps were taken by him on that matter.

THE COURT: Is the case pending at the moment?

MR. KLEIN: Theoretically and actually it is pending before Judge Costantino as a reassigned judge, at which time and before whom the matter will be resumed ab initio, except that we have had certain dispositions already with respect to a determination of the jurisdiction of the Court, which would simplify the continuation of the cases.

But I think that if your Honor has been informed that those cases stood dismissed, I can say this to you, that Judge Neaher withdrew from the cases and disqualified himself and then Judge Weinstein did the same thing. Judge

Costantino got a reassignment of the matter.

THE COURT: Anything further?

MR. KLEIN: One second, sir.

(Pause.)

MR. KLEIN: Since your Honor is looking for a summary and your Honor has given me this opportunity, and I think I told your staff assistant, your Honor, that I would have welcomed having any questions put to me --

THE COURT: You've already said that. All I am required to do is to give you as full a hearing as is necessary for the purpose of this argument, which I have done. I am not engaged in an adversary proceeding. I just want you to have an opportunity to state all the reasons that you can possibly muster that you think are relevant in support of your motion.

MR. KLEIN: I thought perhaps I'd covered it and --

THE COURT: All right. If you think that you have covered it, if you think that you have given the complete view that you have about your situation of disbarment, so be it.

MR. KLEIN: May I just run down the Rule 5(d) for a moment and see whether there is anything I might want to add pursuant to that rule?

(Pause.)

I would say that an examination of the record resulting in such discipline in the state court is subject, number one, to the excepting clause that the procedure was so lacking in notice of opportunity to be heard as to constitute a deprivation of due process.

Number two, that there was such an infirmity of truth with respect to those matters on which guilt was found that four or five of the charges upon which guilt was found were dismissed without any effort on my part other than to claim that the entire matter was without jurisdiction.

Of course, that the imposition of the same discipline by this Court in the presence of such constitutional defects would result in grave injustice, and that brings me within 3.

I think thereby I have covered the elements with respect to reference to this specific statute or this specific rule.

I might say to you that all of the investigations that were had here centered, insofar as there seemed to be recommendation for refusal to act in the federal court, which should have brought about a reversal of the state court, centered around the established fact which was being

contradicted for a while by the prosecution, that there was no essential notice of charge and no hearing had on any charge.

Section 90 of the Judiciary Law, specifically, your Honor, provides for that, and that has been a subject of constitutional determination I think any number of times.

THE COURT: Is it fair to state that your main argument is that the hearing which was held without vacating the order offended due process; is that fair?

MR. KLEIN: That the hearing what?

THE COURT: Without vacating the order offended due process; is that your main argument?

MR. KLEIN: No. I think the main argument is the judgment itself, as of June 29, 1965, upon which your Honor would now act, or has acted, that that judgment itself is, within itself, both on its face and within the opinion supporting it, defective in that four or five of those charges that are in there now have been dismissed already without any effort on my part, and that the judgment itself on its face fails to show there was compliance with Section 90 of the Judiciary Law.

So far as the misconduct goes, I can only say this to you, that I have made answer in the proper place

to each and every one of those charges with detail, showing a complete right, in my opinion, to exoneration on every one of them, except the one, of course, on which there was guilt found, but which had never been made in the original petition of December 17, 1964.

I thank your Honor exceedingly for this opportunity, however belatedly it was, and while I hopefully have energy for survival, I don't consider it too late.

THE COURT: Thank you.

MR. KLEIN: May I also ask, if your Honor please, that perhaps there could be some expedition in this disposition, if it's within the realm of your present occupation with the IBM case, which I know occupies all your time?

THE COURT: And other matters.

MR. KLEIN: And other matters of which I'm not aware.

I appreciate that and thank you very much, your Honor.

(Time noted: 4:30 P.M.)

SUPREME COURT : KINGS COUNTY

TRIAL TERM : PART VIII

- x

In the Matter of William Robert Klein, : an Attorney,

Solomon A. Klein, :

Petitioner, :

William Robert Klein, :

Attorney-Respondent :

- x

Brooklyn, N. Y.

1/3/66

Before:

Hon. Walter R. Hart,
Justice

Appearances:

Solomon A. Klein, Esq.
Petitioner

Kenneth Lawlor, Esq.
For Petitioner

- - - - -

Jamford Aronow, CSR
Official Reporter

THE COURT: This matter was referred to me by the Appellate Division of the 2nd Department for the purpose of "(a) conducting hearings as to the issues

raised by the petition and the denials to be asserted by respondent in his amended answer; and (b) rendering a written report setting forth specific findings as to such issues."

After receipt of the order of the Appellate Division, dated September 29, 1965, and on the 21st day of December, 1965, there was forwarded to me a notice that a hearing "will be held on the issues in this proceeding" -- "on the 3rd day of January, 1966, at 10:00 o'clock in the forenoon of that day at room 538 in the Supreme Court Building, Civic Center, Borough of Brooklyn, City of New York, in the County of Kings, State of New York."

I was informed that a copy of said notice, signed by Solomon A. Klein, petitioner pro se, was served upon the respondent's attorney, and upon the back of the notice of hearing I find the following: "12/21/65 - copy received. Dublirer & Haydon."

On the return date, i.e., today, the petitioner pro se, Solomon A. Klein, and Kenneth Lawlor, counsel for the petitioner, appeared, but there was no appearance by or on behalf of the respondent.

I was informed by Mr. Lawlor that he had received a telephone call from the respondent's attorney

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that he was unable to get here because of the transit strike and that he had requested an adjournment. What did you tell him?

MR. LAWLOR: I informed Mr. Hayden that I would present his request to the Court. He requested the 24th.

THE COURT: Requested an adjournment until the 24th?

MR. LAWLOR: He requested an adjournment to the 24th. I said I would convey that. He also said he would attempt to communicate with the Court in his chambers.

MR. KLEIN: I would like to state that I oppose an adjournment to January 24th and that I would consent to an adjournment no later than two weeks from today, and to suggest that a notice be sent to the attorney for the respondent to that effect; that he must be here together with the respondent on January 17th to proceed with the hearing.

THE COURT: The Court grants the request for the adjournment and fixes the date for the hearing at 10:00 a.m. on January 17, 1966, and the matter is marked peremptorily against both sides.

MR. KLEIN: Does your Honor wish that we send a notice, in accordance with your decision?

THE COURT: The Court accordingly directs that a notice be served upon the attorneys for the respondent and that a copy of said notice be mailed by registered mail to the respondent personally.

MR. LAWLOR: If your Honor please, we do not know the address of the respondent.

MR. KLEIN: Very difficult to locate where he lives.

THE COURT: In that event, send a copy of it by certified mail to his attorneys, with a notation that it should be forwarded to the respondent.

- - - - -

THE COURT: I have just communicated with Mr. Haydon, of the firm of Dublirer & Haydon, by telephone. I called the number WH 3-3397 and was informed that it had been changed to 943-0880. I spoke to Mr. Haydon and informed him that his failure to appear was excusable, due to the emergency arising as a result of the subway and bus strike, and could readily understand his inability to be present. I also informed him that the matter had been set down for January 17th and that the Court expected both sides to be ready to proceed on that date. Mr. Haydon told me that he would so advise his client.

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

- -x

In the Matter of

WILLIAM ROBERT KLEIN,

Attorney-Respondent.

- -x

Brooklyn, New York,
July 20, 1966

B e f o r e:

HON. WALTER R. HART,

Justice.

A p p e a r a n c e s:

SOLOMON KLEIN, Esq.,
KENNETH LAWLOR, Esq., and
JOSEPH W. RYAN, Esq.,
Representing the Petitioner.

WILLIAM ROBERT KLEIN, Esq.,
pro se.

Robert N. Shelli, CSR.
Official Reporter.

THE COURT: Mr. Klein has been waiting here since prior to 10:00 o'clock. I called him in at 10:00 o'clock because I thought everybody was here.

MR. WILLIAM KLEIN: Your Honor called me in at 10:15.

THE COURT: I called him in at 10:15. I assumed everybody was here. They said Mr. Klein was here. I didn't know whether it was your associate, Sol Klein, or the Respondent. He came in and he asked where you people were, and you weren't here. Mr. Klein has a statement to make on the record concerning the fact that I called you at 10:39.

MR. WILLIAM KLEIN: Judge, I have objections reserved to this entire proceeding. I have no desire in any event to enter into personalities with respect to Mr. Klein or Mr. Lawlor except to say this: That as public servants they had time and again an opportunity to extend little courtesies to the Respondent in a proceeding, and for being late, minorwise, this Respondent received endless

denunciation.

Now, I don't want to make any further point of the matter.

THE COURT: You had stated, before we started, if you had come late they would have been in a hurry to take your default, and I said I would not permit that. But I do think that it is manifestly unfair not only to Mr. Klein but to me to keep us waiting here from 10:00 o'clock in the morning, particularly during the month of July. I was supposed to go on my vacation July 1st and I refrained from doing so because of the pendency of this matter before the Court of Appeals, and I figured in fairness to the Respondent if the Court of Appeals came down with a decision adverse to him, in view of the fact that he stands disbarred, that he should have the option of determining just when his hearing should start.

I requested that you send him a notice so that we could fix a date.

MR. LAWLOR: That's right, sir.

THE COURT: He tells me now that he is going

to the United States Supreme Court on this matter. There will be no hurry in fixing a date.

MR. WILLIAM KLEIN: Judge, I only trust that this little experience here might serve as an inducement to my adversaries, should we meet again, to be givingme some courtesy, especially in connection with the setting of a date for hearings; that we might agree together as to when any hearings that are to take place, when they might occur. I had intended to go to Washington. I called Mr. Kotlowitz, your assistant, admittedly late, but only because I hadn't yet gotten a resolution as to what the decision was with respect to certiorari, and I didn't want to speak here prematurely.

THE COURT: Have you made application for certiorari?

MR. WILLIAM KLEIN: It is in process now. I am in the process of getting counsel.

THE COURT: We will set a date that will not interfere with any of those steps that you want to take, but there are certain things that I wanted to get clear in my mind, and I think that there are certain papers I should like to have presented

to me so that I may intelligently determine just exactly what the issues are, and that both of you should understand what the issues are.

I read the decision on the front page of the Law Journal, the decision of the Court of Appeals. There was a reference in there to the fact that the Appellate Division had considered or had in its opinion disbarring the Respondent made reference to statements made by him concerning certain acts of judicial officers, but they went on and said that the only issues involved in the case were the issues raised by the petition.

MR. WILLIAM KLEIN: Your Honor, may I correct for a moment?

THE COURT: Yes.

MR. WILLIAM KLEIN: The opinion of the Court of Appeals states rather that the opinion of the Appellate Division made reference to such baseless charges affecting corruption.

THE COURT: That is what I said.

MR. WILLIAM KLEIN: But it was not my statement; it was the opinion of the Appellate Division.

(The reporter read the Court's comment beginning with the words "I read the decision on the front page of the Law Journal**")

MR. WILLIAM KLEIN: I want to withdraw my correction on that and add, however, that it was not a statement made by the Appellate Division but there was a finding so worded in the opinion by a Supreme Court Justice that I had been found guilty of making baseless charges against members of the Judiciary, and that the Court of Appeals said it would disregard.

THE COURT: Mr. Lawlor, as I read the order of reference to me, I came to the conclusion that the only issue before me is as follows: Does the Respondent Klein have a defense to the allegations set forth in the petition which was filed by Mr. Solomon Klein?

As I understand it, the Respondent appeared before Mr. Justice Baker and there were certain specifications, certain charges. Upon the hearing before Mr. Justice Baker, certain questions were asked of the Respondent. It is

alleged in the petition of Solomon Klein that the Respondent wilfully refused and failed to answer those questions after they had been asked and repeated --

MR. WILLIAM KLEIN: "Repeated" is not in the allegation.

THE COURT: Then I stand corrected. I am speaking now from memory.

The hearing before Mr. Justice Baker was then terminated and the petition was drawn by Mr. Klein --

MR. WILLIAM KLEIN: That is not so, your Honor. There was no termination of the hearing at that point. There was no termination because of the refusal to testify. There was a termination on January 30 or 31st, considerably after the Respondent had testified, more witnesses were called, and then not for ten months was anything done with respect to that situation, there being an interval there when one doesn't know now whether a report promised to the Court by Mr. Klein, to his court, was made or whether that report was suppressed or not made and another

report made ten months later, November 6, 1964.

THE COURT: In any event, all that was before the Appellate Division, and upon which they based their order of disbarment, was the petition of Solomon Klein, and the Court of Appeals has inferentially stated that was all that was properly before them in spite of their reference to extraneous matters which we have heretofore discussed, correct?

MR. WILLIAM KLEIN: I suppose by inference, yes.

THE COURT: Then after the order of disbarment by the Appellate Division, which was based upon this petition, you stated that you had not been given an opportunity to answer; that although you had submitted a brief that that was in the nature of a demurrerto the petition. Is that correct?

MR. WILLIAM KLEIN: Partially so. It was a plea in bar.

THE COURT: And a plea in bar. That you made an application to the Appellate Division

to vacate the order of disbarment upon that ground.

MR. WILLIAM KLEIN: I had also, prior to that, made an application to dismiss the proceedings on the basis of this plea in bar and demurrer pursuant to leave to make motions granted by the Court by order dated January 13, 1965, and that motion was made within the time allotted on February 13, 1965.

THE COURT: And the Appellate Division treated your pleadings, whatever it may have been, as an answer, and they entered their order of disbarment.

MR. WILLIAM KLEIN: That is not so either, with all due respect, if I may say so.

MR. LAWLOR: If I may interject, your Honor, After the filing of this demurrer, or so called answer, there was a motion made sometime after, oh, three or four months later, that the Petitioner made a motion for the discipline, based upon the failure of the Respondent to deny any of the charges contained in the petition,

and it was upon that motion that the order of disbarment was entered, because at that point it still had not denied --

MR. WILLIAM KLEIN: I think that is a true statement.

THE COURT: Have you ever filed, Mr. Klein, any other pleas since that date?

MR. WILLIAM KLEIN: Yes. Judge, on February 13-- and this was withheld from the Court of Appeals by their brief, a twelve page brief -- on the 13th of February a motion was made to dismiss, based on that plea in bar, which motion was reneved by way of cross move to their application for summary discipline, allegedly based on two grounds: 1. That I failed to interpose in the demurrer a denial, in the demurrer answer; and secondly that I had failed to put a calendar date upon that notice of motion and, therefore, it was not a compliance with the rules respecting motions, and for that reason I should be disbarred.

Those were the two grounds given in two pages. Judge, in entering on this, now, I think

I have stated already that I have reserved all objections and I am proceeding to the Supreme Court, and I would like to be cooperative and enlightening here because certainly, Judge, you having been designated, I want you, regardless of whether you ever sit or not, as a human being I want you to know the scope and purport of this entire proceeding.

THE COURT: I lost you when you said "because you have not been designated."

MR. WILLIAM KLEIN: Because you have been. I never met you, Judge, and having met you I cannot face you now with at least making some explanation, even though I think you have no jurisdiction, without making some explanation as one human being to another.

THE COURT: You may be right about that. I don't challange that, and will not challange that until you have had a ruling from the final authority, which is the Supreme Court of the United States, if they grant you certiorari.

MR. WILLIAM KLEIN: My answer to your question, Judge, is that after motion was made to vacate

on the ground that this entire proceeding had been a constitutional nullity, that the motion to vacate with a request for permission to file an answer to the merits, there having been a denial of the motion to dismiss, however, summarily it was made without any opposition coming from the adversary, the motion to vacate was denied by the court unqualifiedly and that is very important here.

However, I was given leave in what I regard a most anomalous manner to serve an answer within ten days to the merits. That was done within the ten days.

THE COURT: There was an answer filed.

MR. LAWLOR: Subsequent to the motion to vacate.

THE COURT: Whether it was subsequent or before, it was filed. There is no contention by you that it was not timely, is there?

MR. LAWLOR: No.

MR. WILLIAM KLEIN: Judge, while we are on that, it is most pertinent. One of the

affirmative defenses interposed within that answer was that in the light of the absoluteness of the order of disbarment, never preceded by any hearings of any kind, there is no judicial function here to be served by these hearings or by you.

THE COURT: That matter has been passed upon by the Court of Appeals, and as far as I am concerned I am bound at the present time by the Court of Appeals. If certiorari is granted in the United States Supreme Court and that agrees with you, then I will be very, very happy.

MR. WILLIAM KLEIN: Certiorari may never even be accepted.

THE COURT: I will be happy to forget all about this matter and be bound by the decision of the United States Supreme Court.

MR. WILLIAM KLEIN: Certiorari is a discretionary matter and may never be accepted. But I will say this, your Honor: That that order of disbarment is a final, permanent order and nothing that your Honor can do by way of

hearing, so far as I understand -- and I would like to be corrected because I am only humble before the law-- nothing that your Honor can do, no matter what his finding may be here, can correct that situation or change it so far as the jurisdictional authority either of yourself as Referee here or of the Court that made the order is concerned.

THE COURT: I agree with you totally: that nothing I can do can reinstate you or vacate the order of disbarment. In other words, I cannot reverse the Appellate Division.

MR. WILLIAM KLEIN: Or you can't recommend with any force.

THE COURT: I am not designated for the purpose of recommending. As I understand the designation, it is for the purpose of making a determination upon the issues raised by the petition and your answer. In other words, all I am to do is to hear arguments and take testimony and not even determine but report to the Appellate Division what facts have been presented to me by both sides and then they will make a determination

as to whether or not you have sustained whatever defense you have to the allegations of the petition.

Now, as far as the order of disbarment being final and irrevocable, in the sense of the word that you have suggested, you are correct. I have no power to vacate or even recommend that it be vacated. I have the power to submit, or the duty to submit, to the Appellate Division my report, and upon my report they will determine whether or not the order should be vacated. They have vacated at least one order of disbarment to my knowledge. I believe it was the Gondelman case. He was disbarred sometime in 1940, if my recollection is correct, and 26 years later, upon the presentation of facts which were developed subsequent to his disbarment they revoked their order of disbarment and reinstated him.

(Discussion off the record.)

THE COURT: Is that your understanding of the issues before me?

MR. LAWLOR: An appeal was taken from the

order of the Appellate Division directing the issues to be heard before you and which permitted him to file the answer.

THE COURT: That appeal was dismissed.

MR. LAWLOR: That appeal was dismissed for non-finality.

MR. WILLIAM KLEIN: I didn't get that.

(The reporter read Mr. Lawlor's statement.)

MR. WILLIAM KLEIN: That isn't true at all. The order was affirmed and the appeal was not dismissed.

THE COURT: My recollection is that what Mr. Lawlor said is correct.

(Discussion off the record.)

THE COURT: Mr. Lawlor has said, and my recollection is the same as his, that the Court of Appeals dismissed your appeal from the order of reference upon the ground that it was not a final order and, therefore, not an appealable--

MR. WILLIAM KLEIN: No, your Honor, there was no appeal.

MR. LAWLOR: It was the order denying the

motion to vacate.

MR. WILLIAM KLEIN: No, no. There was no appeal taken from that. May I apologize completely. Just a moment now. You now see Mr. Lawlor is not talking about the appeal to the Court of Appeals which was disposed of on July 7th. I judge now that what he was referring to is an appeal which I took from the motion to vacate and in which an order of reference was made, and that was dismissed. He is entirely right as being not final.

If he is talking about that, I apologize to Mr. Lawlor and withdraw all my remarks.

Now what I am talking about, the only thing before us now, I thought, was the appeal which appeared in the Law Journal, which your Honor asked for, on July 11th.

THE COURT: You say the only thing that is before us.

MR. WILLIAM KLEIN: I mean with regard to this.

THE COURT: That isn't the only thing before

us. The only thing before us today is: 1, to fix a date for a hearing; and there arebefore me, as far as I am concerned, all of the issues which were referred to me by the Appellate Division, which will remain before me until and unless the Supreme Court of the United States grants certiorari and rules otherwise on your original appeal.

MR. WILLIAM KLEIN: I address myself directly to that with a view of getting on with this matter. No. 1, with respect to the fixing of a date it is my intention to proceed for certiorari and for a stay before the United States Supreme Court, and for that purpose papers are being prepared and counsel is in the process of retention.

MR. SOLOMON KLEIN: Process of retention?

MR. WILLIAM KLEIN: Of retention.

No, 2, that with regard to the matter which your Honor speaks of as to the issues before you raised by this pleading of answer which was filed with the Court which itself reserved all objections previously made and which I today am continuing to reserve in any participation here. With respect to that, I want to say this: That in my opinion,

in my studied opinion, and there has never been any contest of this, though the point has been made repeatedly with the papers served on my adversary, that your Honor has no function, judicial function here or quasi judicial function as a reporter, because there is nothing that can be done after the permanency of the order on appeal has been established; that there can be no hearings which have any adjudicated value or can contribute to adjudication, but that they would be completely unbinding and have no legal force or effect. And notwithstanding what the Court of Appeals may say in that opinion with respect to this order being affirmed, of disbarment, nothing that can be done by any court can make black white or white black, and that has been held by many courts in connection with many proceedings.

If this order, if your Honor please, is a permanent order without the Court ever having received jurisdiction over the person, over the subject matter, as is set forth in the plea in bar and demurrer which was never passed upon as

due process requires, and which, assuming it were passed upon would then have automatically enabled me, the Respondent here, to serve an answer to the merits as required either by the section which Mr. Klein in his brief quoted, Article, I think, 4A covering Sections 401 to 409 of the C.P.L.R., or what was formerly -- which may be read in conjunction with 3211 dealing with civil actions and what was formerly another section of the Civil Practice Act which was carried forth.

In the light of that, since the Court immediately disbarred and handed down its order of disbarment without giving that intermediate opportunity required as a matter of due process for an answer to the merits, that order is a nullity. The Court never got jurisdiction over me from the beginning, nor did, as we contend, the Judicial Inquiry on professional conduct ever get any authority under the orders of the Appellate Division to issue any charges, to make any report with respect to the matters that appeared before it.

I want to say one other thing and then I am through for this purpose: That Judge Baker throughout the hearings -- and this has never been denied. We have a very settled state of record now so that I can speak with authority out of the camp of my adversary -- there has never been any denial that Judge Baker disclaimed repeatedly that there were any charges being entertained against a Respondent or his clients, and that he was entertaining no charges whatsoever regarding the conduct of any judge of which he would have no authority.

THE COURT: What was Judge Baker holding an inquiry about? What was the purpose of his inquiry?

MR. WILLIAM KLEIN: I am glad your Honor asked that. Pursuant to an establishing order dated December 17, 1962 creating this inquiry, which it succeeded from previous inquiries which were being staffed by Denis Hurley, if your Honor remembers, under ambulance chasing and condemnation chasing practice, two subordinate orders of a

special kind were made by the Appellate Division, by its eight judges acting administratively. No. 1, one dated October 9, 1963 in which it referred to Judge Baker within the Judicial Inquiry on professional conduct charges made by William R. Klein in certain Fun Fair litigation against members of the Judiciary and members of the Bar. Subsequently, on my calling attention to the Court that that order was completely unfair to the facts, the Court on its own motion made a voluntary amendment of that order, dated October 30--

THE COURT: Which court?

MR. WILLIAM KLEIN: The Appellate Division, the parent court of this whole inquiry. The Appellate Division made an amendment, a voluntary amendment, to that order which declared now that the charges were charges of the clients, the Orsinis, and certain other charges of William Robert Klein. The charges of William Robert Klein never dealt with judicial misconduct except that of Judge Benjamin with respect to a degrading conduct of a physical nature within the courtroom, his courtroom. Those were the charges that were made by William Klein.

THE COURT: I lost you there. Judge Benjamin with respect to --

MR. WILLIAM KLEIN: There were never any charges made with respect to corruption of judges, nor of Judge Benjamin, but there were charges made of misconduct by Judge Benjamin with respect to the clients and made by the clients and charges made by William Robert Klein, the Respondant here named, with respect to physical degrading conduct by the Judge directed to the body in person of the attorney, William Robert Klein.

THE COURT: Consisting of what? When you say "physical --"

MR. WILLIAM KLEIN: When the attorney for the clients, Orsini, was confined in the toilet of the courthouse --

THE COURT: When you say "the attorney--"

MR. WILLIAM KLEIN: Meaning the respondent here.

MR. SOLOMON KLEIN: Meaning himself.

MR. WILLIAM KLEIN: And he was subjected -- he was declaring firstly that he had a nose bleed, which was then going on, and subsequently, on a subsequent

day, when he declared himself indisposed, that he had been without food over the week-end and that he had been subject to heavy physical indisposition, Judge Benjamin ordered, by three attendants, that I be dragged into the courtroom in order to hear an opinion which he had already pre-determined which would be in effect the clients' and my demise. And I was forced into the courtroom in a wheelchair. That's all part of the records here which have never been taken up anywise by Mr. Klein, a fellow member of the Bar at that time and a public servant obligated to look into charges.

THE COURT: Mr. Klein, I haven't interrupted you --

MR. WILLIAM KLEIN: Your Honor asked a question and I wanted to answer.

THE COURT: I haven't interrupted you. I would like to make this observation, and correct me if I am wrong. Rather than use the word "observation," I should say I would rather ask this question. Was your refusal to answer the questions predicated upon illegality of the proceeding -- the alleged illegality of the proceeding -- before Judge Baker?

MR. WILLIAM KLEIN: Is your Honor directing himself to the charges that are in this matter of refusal to answer?

THE COURT: I am directing myself to the questions which it is alleged you refused to answer before Judge Baker. Did you on the record state that you refused to answer those questions, 1, upon the ground that the order of the Appellate Division was a nullity; 2, that Judge Baker didn't have jurisdiction; 3, upon the ground that the answer might tend to criminate or degrade you?

MR. WILLIAM KLEIN: No, no. The "tend to incriminate" never entered the picture at all. Mr. Klein tried in the record to force that upon my client while he was the witness and I was assured by Judge Baker at the time, when such question was put --

THE COURT: I asked that question simply because there is presently before the United States Supreme Court a question involving the right of an attorney to refuse to answer upon the ground that his answer might tend to incriminate him. I might

say that he has the right to refuse to answer on the ground that it might tend to incriminate him. That is given to him by the Constitution. But whether his exercise of his constitutional right to refuse to answer on the ground that it might tend to incriminate him could be the basis for a disbarment proceeding --

MR. WILLIAM KLEIN: I am fully aware of that. The Cohen v. Hurley matter, Judge.

THE COURT: When I say a matter is now before the United States Supreme Court, I was not referring to Cohen v. Hurley. I am referring to the Spivack case which I understand is now before the United States Supreme Court.

MR. WILLIAM KLEIN: That issue is not here.

THE COURT: That is out of this case. Now your answer to the first two questions.

MR. WILLIAM KLEIN: My answer is that objections were made to the scope of the jurisdiction, to the impropriety and the incompetency of Judge Baker to pass on any questions affecting any judges, the statement was made that there were not charges respecting one judge and that the Court had no power, the

Appellate Division had no power --

THE COURT: All right. What is your answer now? You have a written answer interposed?

MR. WILLIAM KLEIN: Yes, that was filed pursuant to order.

THE COURT: Then I will require, before we fix a date, that there be furnished to me a copy of the printed record before the Court of Appeals.

MR. SOLOMON KLEIN: There was no printed record before the Court of Appeals.

THE COURT: A copy of all papers presented to the Court of Appeals.

MR.SOLOMON KLEIN: We would have to get a truck to bring that in. They are all up in the Clerk's office in the Court of Appeals, the original papers, including all of the numerous letters that the respondent here wrote to the Governor, to the Judicial Conference, the Appellate Division in which letters he accused --

THE COURT: I don't want to go into that. I want those papers, whatever they may be.

MR. SOLOMON KLEIN: They are in the Clerk's office in the Court of Appeals.

THE COURT: I would like also to have whatever memorandum was submitted by each side to the Court of Appeals, whatever briefs or memoranda.

MR. SOLOMON KLEIN: I can give you a copy of my brief and he can give you a copy of his brief, he being William Robert Klein.

THE COURT: I would like also to ask--

MR. WILLIAM KLEIN: Your Honor, I am not --

THE COURT: Wait. I would like also to have a copy of the petition before Judge Baker..

MR. SOLOMON KLEIN: Your Honor has the petition. Your Honor has the order of the Appellate Division and the answer.

THE COURT: No. I have the petition that was presented by you to the Appellate Division.

MR. SOLOMON KLEIN: Correct, sir.

THE COURT: And I have --

MR. SOLOMON KLEIN: The answer.

THE COURT: I do have the answer?

MR. SOLOMON KLEIN: That is right.

MR. WILLIAM KLEIN: Your Honor is asking for the petition or the order of the Judicial Inquiry? I

think that is what you had in mind.

THE COURT: I want the original petition before Judge Baker.

MR. SOLOMON KLEIN: There was no petition before Judge Baker.

THE COURT: Or the order.

MR. SOLOMON KLEIN: The order directing Judge Baker or directing me --

MR. WILLIAM KLEIN: Directing Judge Baker. Mr. Klein has nothing to do with the order.

MR. SOLOMON KLEIN: Directing Judge Baker to make inquiry into the charges made by the Respondent, and his clients.

THE COURT: That order of the Appellate Division was issued as a result of a petition presented to the Appellate Division, wasn't it?

MR. SOLOMON KLEIN: No.

THE COURT: Or was it on the motion of the Appellate Division itself?

MR. SOLOMON KLEIN: Sui sponte.

MR. WILLIAM KLEIN: Mr. Klein once again I think incompletely states the situation. What happened was that there were letters, application form of letters,

for inquiry with respect to these matters. The matters had been -- the requests for investigation had been left ignored, indifferently treated for nine months, and then finally, when the entire bench of eight judges received for the first time a recapitulative statement of the existence of these charges, and no receipt had ever been given or acknowledgment made of any existence of charges, that the court then sat in session in what was to be a consultative court and at that time they refused to make any investigation by letter dated September 25, 1963, so informed my clients and me, and then the Governor of the State of New York addressed me by his counsel stating that the Appellate Division had acted and in the Governor's report to me of what the Appellate Division had done there was such a sharp contradiction of the report to me that in turn the letter was submitted to the Governor again in study and contrast and at that time the Governor then must have done something or other and suddenly I received in the mail a letter from clerk, Mr. John J. Callahan, dated October 10th, together with an order in which he says to me -- that is in the letter of Mr. Callahan

he says to me "That the charges which you made which you are asking be heard are now being referred by the accompanying order to the Judicial Inquiry on professional conduct."

THE COURT: You may submit whatever papers you wish. If you wish to submit a memorandum of law, you may outline any points outlining the legal aspects of the situation. Mr. Solomon Klein --

MR. WILLIAM KLEIN: I think he ought to be called the prosecutor and I called the respondent.

THE COURT: If that is as far as each of you goes before me in calling each other names, I will be very, very happy.

MR. WILLIAM KLEIN: I hope there will be no necessity of anything beyond that.

THE COURT: All that remains is to fix a date. I have stayed available until today, which is the 20th of July. Frankly, I don't like it. It cuts 20 days off my vacation. I was out of town over the weekend, but in view of the proceeding which is contemplated by the respondent with respect to certiorari, and in view of the fact that you say that your papers

are still before the Court of Appeals, I will leave it to you gentlemen to fix whatever date you wish to. I take the blame for having set this case down today because, as I understood it, the respondent stands disbarred and I wanted to give him the opportunity of an early hearing so that a determination could be made.

You seem amused, Mr. Klein.

MR. WILLIAM KLEIN: Judge, because while I appreciate enormously your reported and present anxiety as a Judge to see me have a day in court as quickly as possible, I only laugh inwardly at the fact that I stand permanently disbarred but not at your anxiety.

THE COURT: You didn't laugh inwardly. You laughed outwardly.

MR. WILLIAM KLEIN: I was laughing to myself. You happened to see it, Judge, but I am laughing to myself in appreciation of the anomalous situation in which I find myself and I don't think that has happened in 230 years in New York's history.

THE COURT: Mr. Klein, let me tell you this now.

I am on the bench I think completing my 16th year. I have approximately, with the help of God, four years more to go. I think a search of the record will reveal the fact that I have never hesitated to call a spade a spade. I think the record will show that I am not devoid of what I tell the jury they should be devoid of in deciding a case, and that is human emotions, including sympathy and desire to do justice. I am sorry that it caused you amusement when I said that I was actuated by virtue of the fact that you stand disbarred at the present time, because it is a terrible thing to happen to a practitioner, and I was actuated by the thought in requesting that this matter be set down for today that if there is merit to your defense it should be determined as quickly as possible by me, and I assure you that if I find there is merit to your defense I will not hesitate to say so.

(Discussion off the record.)

THE COURT: I am addressing both Mr. Kleins at the present time. What date do you want to fix? Any time after the first Monday in September.

MR. SOLOMON KLEIN: We can fix it, so far as we

are concerned, the second Monday of September.

MR. WILLIAM KLEIN: The ninety day period, Judge, for certiorari presumably goes from the date of entry of the order of the Court of Appeals. I have not yet received a copy of the order on that appeal and I don't know whether Mr. Klein has received a remittitur.

THE COURT: Anytime after the first Monday in September is agreeable to me. If you want to make it the second Monday in September, if you want to make it the first Monday in October --

MR. WILLIAM KLEIN: October 7th is ninety days after July 7th, which is the date on which the decision appears in the Court of Appeals.

THE COURT: How am I assigned for October?

(Discussion off the record.)

THE COURT: Mr. Klein, you fix the date. I ad addressing the respondent.

MR. WILLIAM KLEIN: My request, subject to the reservation of objections and consultations with counsel as to proceeding, is a tentative date for October 7th or thereabouts, which is the end of the ninety days.

Incidentally, the Court doesn't sit, Judge, until October. There is an October term.

MR. KOTLOWITZ: October 3rd, Special II, and October 17th, Special I.

MR. WILLIAM KLEIN: Make it October 15th, Judge.

THE COURT: October 15th is a Saturday.

MR. WILLIAM KLEIN: Any time in there is satisfactory as a tentative date.

THE COURT: We will set it down for 2:00 o'clock on October 17th.

MR. WILLIAM KLEIN: Satisfactory to me as a tentative date.

MR. SOLOMON KLEIN: That is the date, as I understand it, requested by the respondent Klein.

THE COURT: It is a date agreed upon by all of the parties, is that correct?

MR. WILLIAM KLEIN: I should think so, subject, of course, and I say I don't want any misunderstanding, I don't want to be considered imposing on anybody. I have my reservations, and subject to counsel's view at the time I shall be ready to be here on that date which we have agreed on.

MR. SOLOMON KLEIN: I would like to know what the reservations are.

MR. WILLIAM KLEIN: Reservations are all set forth in the plea in bar in demurrer, in the answer filed and in all the briefs before the Court of Appeals.

THE COURT: You mean your reservation of rights with respect to any legal objection that you may have to the entire proceeding. But as far as the date is concerned, we will proceed upon that date unless there is a stay granted by the United States Supreme Court, or unless they have granted your application for certiorari and the matter is then pending before the United States Supreme Court.

MR. WILLIAM KLEIN: Judge, I can only say this. On October 17th, assuming the bench convenes for the first time in the October term maybe the 6th, 7th or 8th, bearing in mind any number of applications that may be preceding mine before they reach mine, I am not able to say to you -- that is why I suggested, most respectfully, a tentative date of October 17th-- he may not be able to report back to the Court that

the Court has determined the matter.

THE COURT: If they haven't determined the matter and you have, by the middle of August or during the month of August, submitted your petition or your request or application for certiorari, if you have done that and proceeded with due diligence, then I will take under advisement the question of adjourning the matter on that date. But I don't mean by that that if you wait until September or October before you present your application for certiorari that I will adjourn the matter.

MR. WILLIAM KLEIN: Judge, that is entirely up to your Honor. However, I do want to say that I am working on those papers now in the absence of counsel. Counsel hasn't as yet accepted the matter. He was going on vacation, but he pronounced his opinion with respect to the matter and I have not been willing to allow the question of the application of a stay to be delayed, so I am proceeding and served notice upon my adversary.

THE COURT: Any papers you want to submit to me in the meantime, you may submit, either a memorandum

of law or any legal papers.

MR. WILLIAM KLEIN: Judge, in view of the fact that I am reserving all objections, it may be inconsistent with my position to submit anything to your Honor officially, and if Mr. Klein, so eager to offset the ideas that I am seeking delay or that I am subject to a complaint about delay, desires to submit those papers to you so your Honor may have an opportunity to study them in the meantime, I can only say that the briefs in the Court of Appeals are a compendium, a compact statement of all the issues.

THE COURT: You give me a copy of your brief in the Court of Appeals, Mr. Solomon Klein.

MR. SOLOMON KLEIN: Yes.

MR. WILLIAM KLEIN: He also has three copies of mine.

THE COURT: Give me a copy of both briefs.

MR. WILLIAM KLEIN: And a reply, of which he has one.

MR. SOLOMON KLEIN: All I want the record to be clear about is that the petitioner is ready to proceed with the hearing authorized by the Appellate

Division even tomorrow.

MR. WILLIAM KLEIN: But came in late today by 35, 40 minutes, and now there is a battery of three people here to indicate that.

THE COURT: Your statement that you are ready to proceed today or tomorrow is valueless for this reason, that by your own letter you set this down for today for the purpose of setting a date for a hearing and you have made the statement that you are not ready because your papers are still in the Court of Appeals.

MR. SOLOMON KLEIN: No, I want it clear, your Honor. Let me make it absolutely clear. The purpose of my statement, although the words your Honor has taken literally, is that the petitioner is ready to proceed as early as possible. I'd said earlier that we were ready to proceed September 7th. I want to make it unmistakably clear that any request for delay of the hearings comes from the respondent, not from us.

THE COURT: Mr. Klein, I am not interested in any extraneous issues. I am not going to be influenced by either your statement or respondent's statement with respect to anything except the issues involved in this matter.

MR. SOLOMON KLEIN: That is all we want, your Honor.

THE COURT: I am not interested in the respondent's statement, if made, that this matter is being delayed, or in your statement that you are willing to proceed diligently. I have asked you both to fix a date which suits your convenience. You have both stated that you believe that October 17th at 2:00 o'clock will be the date, subject to the reservation made by the respondent, to which I have made certain observations. It is nice to have met with you gentlemen this morning. We will proceed at 2:00 o'clock on October 17th.

(Whereupon the proceeding was adjourned to October 17, 1966 at 2:00 o'clock P.M.)

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SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

IN THE MATTER OF

WILLIAM ROBERT KLEIN,

Attorney-Respondent.

Brooklyn, New York,

October 17, 1966.

B E F O R E:

HON. WALTER R. HART,

Justice.

A p p e a r a n c e s:

SOLOMON KLEIN, ESQ.,
KENNETH LAYLOR, ESQ., and
JOSEPH W. [illegible], ESQ.,
Representing the Petitioner.

WILLIAM ROBERT KLEIN, ESQ.,
pro se.

- -

LOUIS LEEMAN, C.S.R.
Official Court Reporter.

jlb.

THE COURT: Are you ready to proceed?

MR. WM. KLEIN: I have an application to make.

THE COURT: Make your application.

MR. WM. KLEIN: I understand in the first instance that this is a continuing secret hearing held under Section 90 of the Judiciary Law, and I am reserving all objections. At this time, I make the application that the hearings in this matter shall be public.

THE COURT: What do you say to that?

MR. LAWLOR: The hearings are mandated by Section 90 to be confidential.

THE COURT: That is employed out of respect for the defendant's rights?

MR. LAWLOR: To protect the respondent.

THE COURT: I meant the respondent; and if the respondent waives it, I do not see what objection you can have.

MR. LAWLOR: We have no objection.

THE COURT: All right.

MR. WM. KLEIN: At this point, if that is granted, having presumed that this matter be private, I would like to prepare for the public hearing to be held, and I presume that application is denied.

THE COURT: That application is denied.

Let me state for the record; this matter, after it was referred to me by the Appellate Division on September 29, 1965, on the 21st of December, 1965, there was forwarded to me notice that a hearing will be held on the 3rd of January, 1966, at ten o'clock in the forenoon. I was informed that a copy of said notice was served upon your attorney, and I was shown the notice of hearing, with a copy "received" on the back, signed Dubler & Hayden.

On the return date, the petitioner, Solomon A. Klein, and Kenneth Lawlor, counsel for the Petitioner, appeared, and there was no appearance by or in behalf of the respondent, but I was informed that your lawyer was unable to be here because of the Transit Strike, which was a

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good reason, and requested an adjournment. I personally called up your attorney and I told him that his excuse was a valid one, and I telephoned him at WH 3-3397, and then was informed that that telephone had been changed to 963-0880. I spoke to Mr. Hayden and informed him that his failure to appear was excusable due to the emergency arising out of the Subway and Bus Strike, and could readily understand his inability to be present.

I also informed him that the matter had been set down for January 17th, and that the Court expected both sides to be ready to proceed on that date. Mr. Hayden told me that he would so advise you.

Then certain appeals were taken to the Court of Appeals, and I awaited the outcome of those appeals. I remained in town during the month of July, until July 20th. In the meantime, the appeals had been decided adversely to you, and on July 20th, you appeared before me, and we had a preliminary discussion, and at the conclusion of the discussion this matter was adjourned to today at two o'clock.

At that time, your reason for the adjournment was that you were preparing papers, or your attorney was preparing papers, to go to the United States Supreme Court, and that you thought in fairness the matter should be adjourned until they had time to hand down their decision. Since that time, for the record --

MR. WM. KLEIN: May I state now that I think it was fairly contemplated at the time that we should await the outcome of the Supreme Court of the United States disposition, and what occurred in the meantime was as follows:

It was necessary to obtain the record from the Appellate Division here because of your Honor's appointment, and beginning with the date of a disposition of the Court of Appeals, approximately July 7, 1966, constant effort was made on my behalf and by me to obtain those records, and obtain a remittitur.

On July 17th, when we were here before your Honor, that remittitur had not been accounted for, or was Mr. Lawlor able to say when it would

be here. Repeatedly thereafter I was in touch with the Appellate Division, and up to September 8, 1966.

In the meantime, I spoke to Mr. Kenneth Lawlor on the telephone at the Judicial Inquiry, and I have spoken to the Clerks of the Appellate Division, and up to that time the repeated answer was that nobody knew here at this end where the remittitur was, and whether it had been received. Mr. Lawlor, however, stated that he had received in the mail a package which had not yet been opened, containing the minutes of the Judicial Inquiry, which had become part of the record on appeal, to wit, two volumes.

On September 8th, however, I received word from the Court of Appeals that the remittitur had arrived, or had been sent to the Second Department, Appellate Division, on August 11th.

Not until October 12th, seven days after the expiration of the date of my jurisdiction for filing the record on appeal, and the petition, did those papers arrive there, and I then received --

THE COURT: Arrived where?

MR. WM. KLEIN: At the Supreme Court, and I have just now in my office a letter, arriving this morning, advising me, by the Clerk of the Supreme Court, that the papers from the Judicial Inquiry, or rather from the Appellate Division, which without a question has been working very closely with its fellow office, the Judicial Inquiry, had previous contact in this case, I have been informed, that today, October 17th, those papers arrived.

Now, when I say I was informed of what would be sent, I immediately got in touch with Mr. Mack, who has been a very friendly clerk at the office -- he always stated that he is without power to do anything -- and he told me that he sent only what he was instructed to send, and all my papers which are necessary to that review, or for any favorable treatment in the Supreme Court of the United States are once again omitted from the delivery.

I made a protest, and I am waiting an

answer from the Clerk now present, actually the Clerk of the Court, Mr. Elkely, -- I am waiting what disposition would be made. In the meantime, the Clerk of the United States Supreme Court, which I have here a letter --

THE COURT: You may spread it on the record.

MR. WM. KLEIN: Unless there is any question, I do not see why I should extend the record.

THE COURT: If you wish to quote from it, you may do so.

MR. WM. KLEIN: In which it is stated that up to this time, meaning October 12th, the Court of Appeals -- this letter being dated October 14th, from the Office of the Clerk of the Supreme Court of the United States, 'have not yet transmitted its certified original record, which would be part of the review,' and I read from that letter, dated October 14, 1966, from the Office of the Clerk, addressed to me at my office, "This will acknowledge your several

letters in the above-entitled case. The record was received on October 12, 1966, and the above-entitled petition was filed on October 12, 1966, as No. 665, October Term, 1966.

"Paragraph: In response to your inquiry of October 12, 1966, this office will not undertake to secure any part of the record for you. It will be necessary for you to obtain the certified copy of the opinion and order of the Court of Appeals of New York, which you are reviewing in this Court to be placed with the certified record already on file," close quotes.

THE COURT: A certified copy of the opinion of the Court, and the order of the Court? What effort did you make to obtain that? You could have obtained that without any difficulty.

MR. WM. KLEIN: The fact is to the contrary. It sounds strange, but the strangest things occur in this case. Let me say to your Honor, that in addition to the certified copy of the opinion, there is also a

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record being awaited, to wit, the original motion made in that Court, which in effect might have been said to be sponsored by Judge Burke, who having heard it in the first instance, referred it to the entire court to be heard on the return date of the argument before the full bench, and that motion, a very important part of this review in the Supreme Court of the United States, and its disposition, has not yet been, to my knowledge, has not been certified.

THE COURT: Did you apply to the Supreme Court of the United States personally?

MR. WM. KLEIN: My answer to your Honor is that repeatedly, by letter and telephone, and by personal visit, I have been in touch with the Appellate Division, Second Department, the Judicial Inquiry, and having spoken repeatedly to Mr. Kenneth Lawlor, to the Clerk in the Court of Appeals, by telephone repeatedly since that time, and have spoken to Mr. Fennely, plus another gentleman, and finally

with Mr. Cannon, in that order, but actually with all; and I visited the Supreme Court of the United States at Washington, D.C. twice, and only on October 7th, when the jurisdiction had been over, and I assumed everything was in order --

THE COURT: You say "when the jurisdiction was over."

MR. WM. KLEIN: The jurisdiction had been expired.

THE COURT: What do you mean "had expired?"

MR. WM. KLEIN: I had 90 days after the date of disposition by the Court of Appeals to file my petition. Under the rules, I have the responsibility also of delivering to them the transcript so it would be under control of my opposition, a very rare situation, that in this case, your Honor, the decision certifying the Judicial Inquiry on Professional Conduct, and I say that humbly respecting the Court itself, which brought about my disbarment

without a hearing --

THE COURT: When you say "The Court," whom do you mean?

MR. WM. KLEIN: The Appellate Division, Second Department, sir. On that day, when I reached Washington, I found that this record was not even there, and they had not docketed my case. However, they suggested, in sympathy, that I should prepare an appendix to my position with forty copies, together with the amendment and file it with my petition, under the heading of "jurisdiction," where I would show that I had made many, many efforts, written and oral, that those records, due there before the 7th, was not yet available; and that the Court would then have presented to them by the Clerk, that appendix together with my petition.

THE COURT: Will you answer my question? Was an application made for a stay of your proceedings?

MR. WM. KLEIN: I am about to come to that. I should say that on or about August 20th,

without having the record before the Court, and supplying my own record in photostat form, an application was made for a stay, and that stay was, I think on September 4th, denied.

THE COURT: By whom?

MR. WM. KLEIN: By Mister Justice Harlan.

THE COURT: And what grounds did he give for denying it?

MR. WM. KLEIN: He gave us a very striking ground -- that there is no substantial Federal Question involved. In that respect --

THE COURT: You are not calling on me to reverse him, are you?

MR. WM. KLEIN: No, no. Your Honor has not that before him, whether there is a substantial Federal question here.

THE COURT: He refused the stay?

MR. WM. KLEIN: I am not asking your Honor to do anything than more than in the circumspection unless it is required. I am not addressing myself to that. I am addressing myself to the fairness of this whole situation.

THE COURT: We will come to that when we proceed with the witnesses.

MR. WM. KLEIN: I am talking about a situation with regard to an adjournment here. Have you considered my application?

THE COURT: What is that?

MR. WM. KLEIN: I made another application for reconsideration based on the petition which had not yet arrived, and I supposed that the Court would have, for the record, the transcript of the Appellate Division, Second Department; and then I found that the Court had denied the application, so much of the application which asked for reconsideration or reargument that I had to go on, an application based on the arrival of the whole record for the reference of the matter to the Court, that phase of the motion, because under the rules I have to apply to the Court where a single Judge has acted, or refused to act, and that part of the application was not dealt with in the disposition.

Now, suffice it to say that there was at this time --

THE COURT: You were about to state the reason for your request for an adjournment.

MR. WM. KLEIN: I have asked for a public hearing.

THE COURT: And I am granting you a public hearing.

MR. WM. KLEIN: And I ask for an adjournment in order to prepare for that public hearing.

THE COURT: No, no, I will grant no further adjournment in this matter.

MR. WM. KLEIN: Irrespective of what I am about to say now?

THE COURT: On the basis of what you said now. If you have anything further to add, say it now for the record.

MR. WM. KLEIN: With regard to the further ground for an application for an adjournment, I suggest to your Honor, that in deference to the Supreme Court again, which has been delayed by what I call the tactics of the appointive Court, and the parent Court, and the

employment of the Judicial Inquiry on Professional Conduct, and in deference to your treatment in this matter, your Honor should withhold action. I should call your Honor's attention to the fact that your Honor stated on July --

THE COURT: The 20th.

MR. WM. KLEIN: You were designated on September 27th, I believe, of 1965, and under the Statute, your Honor was required to accept or decline the designation within thirty days. Nothing was heard from your Honor with respect to that until some time, I think, December 17, 1965, which was a period of seventy days after the designation. I trust that at that time, your Honor, may very well have stated in the affidavit, may very well have weighed the question as to whether he would assume to act in this matter, especially since -- and this stands undisputed in the record, and uncontested by the Judicial Inquiry office, that the Constitution of New York State, Section 6, Article 6, Section 20, formerly 19, appears to prevent a Justice from acting as

a Referee in any matter, and that has never been contested until now.

MR. LAWLOR: The order of reference designated your Honor as a Justice of the Supreme Court.

MR. WM. KLEIN: Well, I trust that an order --

THE COURT: You mean there is no such this as an Official Referee now?

MR. WM. KLEIN: No. First of all, there are no Official Referees.

THE COURT: There are no Official Referees?

MR. WM. KLEIN: And when Judges reach the age of 70, they get a reappointment.

THE COURT: And I am one of them?

MR. KLEIN: Yes, that's right.

THE COURT: What is your point?

MR. WM. KLEIN: The point is that the Constitution of the State of New York bars any Supreme Court Justice, any Court of Appeals Judge, any Surrogate, and others enumerated, from acting as a Referee, Investigator, Arbitrator, or what-not.

THE COURT: I am not acting as a Referee. I am acting as a Justice of the Supreme Court.

MR. WM. KLEIN: The order appoints you as Referee. Let us look at the order. I trust your Honor might want to take an opportunity to consider that situation. Mr. Lawlor has repeatedly had this matter presented to him, and he has never disputed it. You are a Referee to hear and report.

THE COURT: As I read the order, it says, "It is ordered that the motion be and the same hereby is granted to the extent of permitting respondent to serve an amended answer on petitioner within ten days after the entry of this order, and it is further ordered that thereupon the matter be and the same hereby is referred to Honorable Walter R. Hart, a Justice of the Supreme Court, as Referee for the purpose of conducting hearings," and then it goes on to state what the purpose is.

MR. WM. KLEIN: Then may I ask your Honor at this point, can Iread from the Constitution of the State of New York, and also from Section 4312.

THE COURT: You may read anything you want.

MR. WM. KLEIN: If you will look in the back of the book, I think, Article 6, Section 19.

THE COURT: Look in the back of the book?

MR. WM. KLEIN: Section 20 is entitled "Qualifications for restrictions upon holding judicial office." I am reading from Sub-section 4. Am I correct, Section 4? And now I am reading from Sub-division B: "A Judge of the Court of Appeals, a Justice of the Supreme Court, Judge of the Court of Claims, Judge of the County Court, Judge of the Supreme Court, Judge of the Family Court, or a Judge of a Court for the City of New York, established pursuant to Section 15 of this Article, who is elected or appointed after the effective date of this article, may not --" Subdivision 7, " hold any other public office.?"

THE COURT: Forget that one. Get down to the important part.

MR. WM. KLEIN: "Hold any other public office or trust except a member of the

Constitutional Convention, or member of the Armed Forces of the United States, or of the State of New York ***. nor engage in the practice of law, act as an arbitrator, referee, or act in any action or proceedings or matter, or engage in the conduct of any other profession or business which interferes with the performace of his judicial duties." I would also like to call attention to the statutory implementation of that.

THE COURT: Let us see what it says.

MR. WM. KLEIN: I am sorry. May I further read that portion of Section 4312 of the C.P.L.R., Sub-section 4: "A Judge shall not serve as a referee in an action brought in a Court of which he is a Judge, except by the written consent of the parties, and in that case he cannot receive any compensation as Referee."

THE COURT: That is not applicable here. There is no action pending in this Court.

MR. WM. KLEIN: I think the Statute

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reads, "Action and matter and proceeding," and they are interchangably used within the Statute, and the action that is now pending here is the matter of an attorney entitled "In the matter of William Robert Klein, an attorney." However, this is in my opinion supplementary to the Constitutional provisions, and comes from a prior section of the Civil Practice Act, both being taken from the Constitution.

I would like to make my further application for an adjournment, and I trust that your Honor will take this aspect into consideration also. I think I have stated that it was fairly intended at the time we adjourned this to October 17th, that the disposition of the Supreme Court be complete. It was not complete because of the conduct of the adversaries.

THE COURT: I set it down --

MR. WM. KLEIN: Without knowledge --

THE COURT: I set it down --

MR. WM. KLEIN: You set it down at that time without knowledge of subsequent events, your Honor.

THE COURT: Of course, if I had knowledge of subsequent events, I would not be a Judge.

MR. WM. KLEIN: I don't mean that. I mean, that I at that time --

THE COURT: You made an application for a stay in the United States Supreme Court, and to a Justice of the United States Supreme Court, and it was denied. Now, I will hear your adversary.

MR. WM. KLEIN: I would like to complete the rest of my application.

MR. LAWLOR: It appears from the affidavit of the respondent that he likewise made oral application to both Judge Fuld and Judge Burke for a stay of these hearings, and his applications were each of them there denied.

MR. WM. KLEIN: That was denied after a disposition.

THE COURT: All right, proceed.

MR. WM. KLEIN: I ask that the question of adjournment be further granted in view of the fact that I have reserved all objections to the

entire proceeding, and on the further ground that as soon as the disposition of the United States Supreme Court is disposed of, and I might say to your Honor that there has been a delay, perhaps your Honor and perhaps not, by the previous disposition of one Judge, that there is no substantial Federal question; that it is my intention on advice of counsel to apply to the Court of Appeals for reargument, and for clarification -- clarification of this opinion, which left two matters very, very much in serious doubt, and I wish to go into this, if your Honor cares to hear them; and also with regard to reargument in that first Constitutional question which was taken up seriatum presented to the Court, where it was completely omitted from any consideration by the opinion, and the opinion was written upon two paragraph basis;

One: That in their hearing, an additional opportunity, so to speak, quoting from the Court's opinion, since an additional opportunity was being granted for a hearing, that therefore the Court

deemed the judgment warranted, and I thought on the other hand if there was a hearing granted, that would be the reason for vacating the judgment, and we could not have been in the Court of Appeals unless finality was already established.

As a matter of fact, Mr. Klein told you, Mr. Solomon Klein, made a motion before the Court of Appeals, asking that two of the three appeals which I had taken were to be dismissed on the ground that they were not final, and that the only one final was the judgment itself, and that motion on consent was granted with respect to the last two appeals.

That is all I wish to say with respect to the basic reasons why I wish to apply for an adjournment.

THE COURT: When did they had down their decision? Some time in the early part of July, and it is now October?

MR. WM. KLEIN: I say, your Honor, that I was asking for a reargument at that time, to go to the Supreme Court of the United States,

and I went to the Supreme Court of the United States, and was awaiting the outcome and the disposition of my application, unfavorable or favorable to me, either way, but for the time being, and then I should go before the Court of Appeals, based upon the effect of their opinion, and they never decided on the Constitutional questions, and therefore I ask --

THE COURT: They did not deny your right to appeal on the ground that you went up there without leave. They decided it on the merits.

MR. WM. KLEIN: They confirmed that right. I thought they confirmed that right on the ground of substantial Federal and State Constitutional questions, and when they came to write their opinion, there is not a single reference to the Constitutional question.

THE COURT: And your remedy was to move to amend.

MR. KLEIN: That is what I am going to do.

THE COURT: Your remedy was to move to amend the remittitur. I have seen it done time and time again.

MR. WM. KLEIN: The usual amendment for a remittitur is where there is no evidence of Constitutional questions were considered. I went up as a matter of right and I did not have to.

THE COURT: If you did not establish it then, why do you want to establish it now?

MR. WM. KLEIN: I do not want to establish it. I want to ask the Court to consider the Federal and State Constitutional questions. The Court did one other thing, if your Honor pleases, the Court stated that the conclusion of the Supreme Court and the Appellate Division, that Supreme Court Justice had found me guilty of making baseless charges against members of the Judiciary, and members of the Bar.

THE COURT: I do not think that he found you guilty of that. He found you guilty,

among other things, of refusing to answer questions put to you.

MR. WM. KLEIN: Who is he?

THE COURT: Judge Baker.

MR. WM. KLEIN: Judge Baker found me guilty of nothing, but the Appellate Division in the Supreme Court had an opinion that the Supreme Court Justice had found me guilty of a non-existing charge never made, and the Appellate Division said that they would disregard that finding in their opinion.

THE COURT: That is not before me now.

I am not here to determine whether or not the charges against the Supreme Court Judges had any basis in fact, and I will exclude any testimony that relates to your charges against the Supreme Court Judges, or even a Justice of the Appellate Division. I am here to hear and take testimony on the matter specified in the order, and only the matter specified in the order.

MR. WM. KLEIN: Does your Honor still

state that notwithstanding the Constitution, that you will continue?

THE COURT: I never said anything like quote, "notwithstanding the Constitution." What I said is that notwithstanding your interpretation of the Constitution, I will hear your adversary.

MR. WM. KLEIN: I am not through yet, if your Honor pleases.

THE COURT: How much longer are you going to be? If it's your purpose simply to consume the rest of the day, I must stop it somewhere. You are asking for an adjournment?

MR. WM. KLEIN: And I am asking on stated grounds which are on the record. This is no matter that is lightly to be dealt with. I am coming before this Court on a situation that has existed for a long period of time.

THE COURT: I am not indicating that I am treating this lightly.

MR. WM. KLEIN: I trust that your Honor will not think that I used up an hour of your time needlessly.

THE COURT: I did not say an hour.

MR.WM. KLEIN: If your Honor will deny the application on the ground that I asked it in good faith, my application for a clarification of this present most dubious opinion, then am I to consider that application denied?

THE COURT: I am going to hear the other side when you are through.

MR. WM. KLEIN: All right. I am sorry.

THE COURT: I am not cutting you short.

MR. WM. KLEIN: I am through with that application for an adjournment.

THE COURT: What have you to say on the two points, one of them being the order which designates me a Justice of the Supreme Court as a Referee?

MR. LAWLOR: If your Honor pleases, it is my opinion that the Constitutional provision, with reference to compensating of Referees, does

not apply here. The standard practice, and this issue, I believe, was raised in a matter about a year ago by a respondent, and it was there held that there was no issue raised in that to your Honor.

THE COURT: Will you be specific? Where was it held, and by whom?

MR. LAWLOR: It was raised before the Nassau County Judge, and a matter there, and I am trying to think -- I do not recall the name of the proceeding, but it was about a year ago, and I believe that Judge Meyer sat in that proceeding. As your Honor knows, the precedent of appointing Supreme Court Justices as Referees has been a continuous practice. It was in the Freidman matter, that a Judge sat, and Judge McDonald is sitting in a present one.

THE COURT: That is not an authority. When you say it is authority, I would like to have the name of the case. My inclination is to hold that the words "As Referee" in the order are surplusage because the order designates me as

a "Justice of the Supreme Court." Now, get to the other point.

MR. LAWLOR: As to the next point, I think, if your Honor pleases, this respondent has been seeking a hearing. He made his application to the Court for leave to interpose an answer, which has been granted. Now we are ready to grant the hearing which he has been seeking right along. We are ready today to proceed to give him this hearing that he has sought and demanded.

THE COURT: The thing that puzzles me, Mr. Klein, and it apparently caused me useless concern, was the fact that you stand disbarred at the present time, and continue to be disbarred until a hearing is held; and the findings are passed upon by the Appellate Division, in which event they may either continue your disbarment or they may reinstate you. I will take under consideration the withholding of my findings after the termination of these hearings until the Supreme Court has ruled upon your argument. I do not say I will. I will take that under

advisement, if the Supreme Court of the United States has either accepted or rejected the application now pending becore it; so that no harm will be done until they decide in your favor or against you; but as far as the Court of Appeals is concerned, you had ample opportunity when you were up there to raise every Constitutional point that you saw fit to raise, but I cannot at this belated date, thirteen months after the matter was referred to me, adourn the matter further.

Your request for a public hearing is granted. Now, will you read the rule to me about private hearings, and tell me whether I was right or wrong in my contention or thought, that the reason why pivate hearings are ordered by the Appellate Division, is to protect the respondents.

MR. LAWLOR: That is right.

THE COURT: And if the respondent waives it, I see no reason why he should not be given a public hearing.

MR. LAWLOR: It is mandated by Section 90, which provides that there shall be not a public record until after the determination of the

disciplinary proceedings. That appears under Section 90.

THE COURT: That he shall ask otherwise.

MR. LAWLOR: That the matters under consideration shall not be deemed a public record until after the termination of the disciplinary proceedings.

THE COURT: All right. The hearing will be public.

MR. LAWLOR: To which we have no objection.

THE COURT: If the respondent so desires.

MR. LAWLOR: We offer no objection.

MR. WM. KLEIN: Will your Honor also rule upon the point I made, that the acceptance of the reference must be within thirty days after the designation?

THE COURT: There is no such provision in the order.

MR. WM. KLEIN: There is in the Civil Practice Act.

THE COURT: Read the relevant paragraph of the Civil Practice Act to me.

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MR. WM. KLEIN: Rule 4313 of the Civil Practice Act reads as follows: "Except where the reference is to an official or special referee, upon the entry of an order of reference, the Clerk shall send a copy of the order to the Referee, and unless the order of reference otherwise provides, the Referee shall forthwith notify the parties of a time and place for the first hearing to be held within twenty days after the date of the order, or shall forthwith notify the Court that he declines to serve." I think I said thirty days before. I am correcting it to twenty.

THE COURT: I hold that this article does not apply here. It is headed "Trial by a Referee," and it does not apply to a Justice of the Supreme Court, and does not apply in this particular case, because it refers to an order of reference under 4311, which provides that such an order of reference shall direct the Referee to determine the entire action, or specific actions, to report issues, or perform particular acts, and to receive and report evidence. Apparently

Rule 4313 refers to an official or special Referee. There is no such person as an official Referee at the present time, and that apparently is put in there inadvertently; and I place emphasis upon the words, "The Referee shall forthwith notify the parties." This order did not provide for any notice whatever.

MR. LAWLOR: I believe a copy of that order was forwarded to the respondent by the Clerk of the Appellate Division.

THE COURT: To raise the point that my acceptance was not lawful is not a good one.

MR. WM. KLEIN: I merely want to say before we go any further that Justice Black of the Supreme Court, in a dissenting opinion, denounced the practice of Judges sitting as Referees, and in a case in re. Caleenen -- I beg your pardon, it is another one.

THE COURT: Somebody against Steinbrink?

MR. WM. KLEIN: No, no.

THE COURT: There is a decision in that case where Judge Steinbrink acted as an arbitrator --

MR. WM. KLEIN: And was he then barred?

THE COURT: And they said he could not do that because he attempted to enter judgment upon his own award.

MR. WM. KLEIN: The Court of Appeals held that no Judge of the Supreme Court may be designated to act as Referee, and denounced the practice, and that was in this article, this Section 19. However, your Honor has disposed of the matter, and I am not seeking to argue it any further.

THE COURT: Do you want a public hearing? Let us get a Courtroom.

MR. WM. KLEIN: I want to make one other application.

THE COURT: Go ahead.

MR. WM. KLEIN: My application now is for your Honor's disqualification.

THE COURT: State the grounds.

MR. WM. KLEIN: Upon the grounds, Number One; that your Honor has been a confrere of Judge Benjamin, who is charged herein, and has been a colleague of yours in the Supreme Court of Kings County, on the Bench, I assume, for a period

of years, and that the effect of these charges is to give and effectuate a vindication of the Judge without his having to submit to charges which still stand unpleaded.

THE COURT: I am not going to hear any testimony concerning the truth or falsity of any charges against Judge Benjamin. I make that ruling now.

MR. WM. KLEIN: I understand that.

THE COURT: I am only going to hear and report with respect to the matters set forth in the order designating me, and as far as Judge Benjamin being a former colleague of mine is concerned, he is a former colleague virtually of every Judge of this Court, and every Judge of this Court would be disqualified. Judge Baldock is also a former colleague of mine. Judge Ughetta is also a former colleague of mine.

MR. WM. KLEIN: And all the parties present in this disciplinary proceeding --

THE COURT: They would not influence my decision one iota. If they do not establish their case, they do not establish it.

MR. WILLIAM KLEIN: Your Honor undertakes this reference at a time when he is subject to renewal of your appointment at the end of this year, at the hands of the Appellate Division, who is a party to this case, a party before the Judicial Conference of the State of New York, for having failed to make an investigation, which was followed by that Court and its eight members, and one of the charges was against one of the Judges, and he disposed of the charges which were made against the Court itself, before the Judicial Conference, as follows --

THE COURT: I made that statement together with the statement that I did not want this matter to go beyond the end of this year, at the time I granted you your adjournment, and I said I did not want it to go beyond the end of this year because I have not made up my mind whether I will seek a certification, and that goes now -- whether I will seek a certification for another two years.

MR. WILLIAM KLEIN: Your Honor did not so

state at the time on the record. I don't remember that.

THE COURT: Whatever I stated for the record is on the record.

MR. WILLIAM KLEIN: Is your Honor now going to hasten the proceedings in order that your Honor will not be subject to that question?

THE COURT: What question?

MR. WILLIAM KLEIN: As to whether or not you will have a certification at the end of the year.

THE COURT: What I have to prove to the Appellate Division is that I am in good health and of sound mind. As far as my health is concerned, I feel I am all right, but as far as being of sound mind, well, that is something else.

MR. WILLIAM KLEIN: I have no doubt that you are all right.

MR. LAWLOR: If we have to put on all evidence regarding the charges against the Judges made by the respondent, we will end up in Buffalo.

MR. WILLIAM KLEIN: There is a statement in the brief before the Court of Appeals, which has

not been disputed, that were it not for all the charges filed and made against the Judges of the Court, that these charges would not have come up before the Court, Mr. Kenneth Lawlor, who undoubtedly assisted in the preparation of the case --

THE COURT: As I sit here now, I want to tell you frankly that I have no opinion whatsoever with respect to this matter. I have no regard for any human being on the face of God's earth to such an extent that that regard would prompt me to do an injustice to a fellow member of the Bar. I think if you will trace my career at the Bar, and my reputation, you will find that I have defended more lawyers than any single lawyer in this City of New York, as far as being influenced by any external factor is concerned, I can assure you that I will not be influenced in the slightest degree by former associations or by future possibilities.

I am here to do justice, and anybody who accepts appointment or election, or a nomination for a Supreme Court Judge, who is not inspired by

the purpose of doing justice, then he is not deserving to be here.

MR. WILLIAM KLEIN: I agree.

THE COURT: I sat here very patiently and I have been patient, I think, with you.

MR. KLEIN: I agree with you, with that portion of that.

THE COURT: The former portion. I don't care whether you agree or disagree with it because I find myself in very decent company. You disagreed also with the Supreme Court of the United States; with the Court of Appeals; with the Appellate Division, and with numerous other Judges of the Supreme Court, but I am not here for the purpose of taking umbrage at that or with anything you say. I am here for the purpose of deciding this matter, fairly and squarely upon the merits, and I would like to get started.

MR. WILLIAM KLEIN: Your Honor's statement that I disagree with many other Judges of this Court is not in my opinion a fair statement. I received from Judge Benjamin, after the trial of the main case, a victory in terms of an interlocutory judgment, and then he reversed himself, so it is not a fair

statement to make that I disagree with all the Judges

THE COURT: You agreed with Judge Benjamin, when he decided in your favor, and you disagreed when he reversed you.

MR. WILLIAM KLEIN: When he later decided against me, I had every right to.

THE COURT: I want to tell you this; I disagree with many of the decisions of the higher Court, and I presume that the Appellate Division also disagrees -- the Justices of the Appellate Division disagree with the decisions of the Court of Appeals; and the Judges of the Court of Appeals disagree with the decisions of the U.S. Supreme Court, but nevertheless we are bound by those decisions, as far as they are concerned, and it does not reflect upon the integrity of those we disagree with.

MR. WILLIAM KLEIN: I am going to try to hasten on the ground of disqualification without extended argument, and then I shall act in accordance with the rule laid down by the Court of Appeals in such a situation, and I shall at that

time decline to participate in the hearing, as I understand it.

THE COURT: Yes.

MR. WILLIAM KLEIN: Your Honor agreed with me at the last hearing, that sitting as a Referee here now, to hear and report back to the parent Court, with a final judgment outstanding already, which your Honor cannot vacate, which is final for all purposes, that your Honor can have no judicial function here; that that judgment is binding upon your Honor, and I come before your Honor under a cloud of disbarment already, with my credibility thus affected.

THE COURT: Are you quoting me now?

MR. WILLIAM KLEIN: No, no. I say that so that the record will be clear.

THE COURT: A record as to what?

MR. WILLIAM KLEIN: Your Honor can understand that you can serve no judicial function insofar as that your report is not binding because the final judgment is already down on the record.

THE COURT: I did not make any such statement. I said I am not here to make a determination.

I am simply here to report to the Appellate Division my findings, and it is up to them to adopt or to reject my findings. I made no such statement as you stated. The record will bear me out on that.

MR. WILLIAM KLEIN: I will stand on the record as it is.

THE COURT: You are standing on it.

MR. WILLIAM KLEIN: I say to your Honor that the structural relationship of this situation with the Court that has appointed you, and that makes you the Referee to hear and report, is adversary to me in the pending proceedings. I am talking about the parent Court.

THE COURT: Who is the adversary?

MR. WILLIAM KLEIN: The eight member bench.

THE COURT: I thought you meant me.

MR. WILLIAM KLEIN: I did not intend that. The eight member Bench is adversary in the pending proceeding before the Judicial Conference, on which there have been three individual opinions from three presiding Justices of the Third Appellate Division of the State, and that still lies on the desk of

the Judicial Conference of the State of New York uncompleted. The record, which showed that the Appellate Division, reporting to the Governor of the State of New York, with respect to the facts concerning the investigation of the Judge, was found to have been contradicted by the facts, when compared with a letter, that is, a letter written by the Court, as disclosed to me by the Governor of the State of New York, compared to another letter addressed to me by the Court approximately simultaneously passing through the mail, on December 25, 1963 and one dated December 25, 1963.

THE COURT: What has all this got to do with my disqualification?

MR. WILLIAM KLEIN: Insofar as your Honor is an appointee of that Court, I cannot see a reference here to an appointee of that Court as having any kind of effective justice involved, and for the following additional reason; that if your Honor should take testimony and find that the bearing of the witnesses, or the demeanor of the witnesses before him was such as to bring one conclusion -- the cases have held unanimously

and uniformly that such conclusion of the Referee is not subject to review, I am, therefore, in a position to say to your Honor that a Referee who is designated by that Court, who is due to report back to that Court, who designated him, and the natural effect of any such hearing can only be, and I submit most respectfully to your Honor, that you can only by your disposition affect my adversary --

THE COURT: That is not so.

MR. WILLIAM KLEIN: -- and you cannot assure me --

THE COURT: That is not so.

MR. WILLIAM KLEIN: -- that I shall receive any satisfactory treatment.

THE COURT: The charge is that the first time that you failed and refused to answer questions before Judge Baker --

MR. WILLIAM KLEIN: And I was found guilty of that already.

THE COURT: Which was proper, and I may find that you did not.

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MR. WILLIAM KLEIN: That will not affect me.

THE COURT: Why won't it affect you?

MR. WILLIAM KLEIN: Because the final judgment is already entered. If your Honor will now do this; if your Honor will privately say this, apply to the Court for vacation of the judgment against me so that I can appear before you equally and originally, I have a readiness to go on.

THE COURT: I have no power to do that. I have no power in that regard.

MR. WILLIAM KLEIN: I think so.

THE COURT: You made that motion and it was denied.

MR. WILLIAM KLEIN: Here is what happened. I asked for a transfer to the First Department where a Bar Association already has these charges, commanded by Judge Benjamin to carry this forward secretly, after the Bar Association had the charges seven months already.

THE COURT: You are again making accusations.

MR. WILLIAM KLEIN: Everything I say is on the record.

THE COURT: Do you know that he was commended by Judge Benjamin?

MR. WILLIAM KLEIN: Of course. That is in the record. I have the record here.

THE COURT: You are moving to disqualify me?

MR. WILLIAM KLEIN: The witness that so testified is sitting outside.

THE COURT: You are moving to disqualify me. You stated your second ground.

MR. LAWLOR: If your Honor pleases --

THE COURT: Have you stated your second ground?

MR. WILLIAM KLEIN: I think I have given three or four grounds.

THE COURT: On the first ground, I am powerless to do anything.

MR. WILLIAM KLEIN: And I stated that these feelings can affect my adversary.

THE COURT: I deny your motion.

MR. WILLIAM KLEIN: That is not all I have. I have already stated that your structural relationship to the parent court is in effect the same here

as the prosecution in relation to the parent court, in which you are a servant of that Court and you are a referee and not a Judge.

THE COURT: I will tell you now; I am not a servant of anybody and of no Court, and I decide cases in this court even though on the appeal I may be reversed. If I think the interests of justice require the decision which I make, the record will show that is what I do.

MR. WILLIAM KLEIN: And I think your Honor has done that very often but I say this, that in the present status of this matter, your Honor is powerless and helpless to do anything.

THE COURT: I am not powerless. I am a Justice of the Supreme Court.e I am here to make my findings. If I make my findings, I will state them in sound language as my mind dictates. If the Appellate Division does not follow it, you have your remedy.

MR. WILLIAM KLEIN: I have no remedy.

THE COURT: Yes, you have your remedy.

MR. WILLIAM KLEIN: My remedy is to this final judgment.

THE COURT: You argued that before theCourt of Appeals.

MR. WILLIAM KLEIN: And I want to go back to the Court of Appeals to have that situation verified because the Court said in their opinion that this order was vacated --

THE COURT: I did not say that.

MR. WILLIAM KLEIN: -- to the extent of allowing hearings. I say it was denied, and they allowed hearings. The Court may have in effect intended something else.

THE COURT: I did not say anything about an order of disbarment being vacated.

MR. WILLIAM KLEIN: It says, "the motion to vacate made by this individual, Mr. Klein, the respondent, was granted to the extent that hearings were allowed." Well, taken it was granted that hearings were allowed. However, I do not want to press that point. I expect to press that before the Court of Appeals.

Now, the additional grounds, your Honor, is --

I meant to say, your Honor, that the decision of the Appellate Division, Second Department, with respect to my motion to vacate, made properly upon an entry of the final judgment -- and I think this is most significant -- in the Court's actual refusal to say it was not biased and prejudiced, or it refused to say it was not biased and prejudiced and it decided that the application for transfer to the First Department is denied with leave to renew without prejudice upon the Referee's report, and I say to your Honor --

THE COURT: Which Referee's report?

MR. WILLIAM KLEIN: Meaning, your Honor's, and if that report comes down, and it is favorable to me, under In re Brown, 13 App.Div., the Court is not bound to accept it; and if it is unfavorable, I know it will be a confirmation of their premature judgment, so I have, "Heads I lose, Tails I lose." I lose either way, and I cannot, your Honor, --

THE COURT: You are talking again about my disqualification.

MR. WILLJAM KLEIN: I ask your Honor to remember that the Court itself has refused to deny my application that passed upon the allegations of the bias and prejudice. Mr. Lavlor's office did not dispute a single fact of anything I said in those papers.

THE COURT: He has not had a chance to dispute anything.

MR. WILLIAM KLEIN: I mean, in his affidavit.

THE COURT: I stopped him because I wanted you to finish your argument. I let you go ahead with your motion to disqualify me. I am going to deny your motion to disqualify me.

MR. WILLIAM KLEIN: Not in the event --

THE COURT: In any event. I have waited for a few minutes, and apparently you have exhausted all your motions, or do you have any more?

MR. WILLIAM KLEIN: I trust your Honor will allow me some more time.

THE COURT: You have been at it now for more than an hour. It is now a quarter to three.

MR. WILLIAM KLEIN: I merely suggest before

I make my final statement, that I consider it an application in fairness here, that this matter be referred back to the parent court for the purpose of enabling me by vacation of the judgment to come before your Honor free and clear and not in a cloud.

THE COURT: As far as I am concerned there is no cloud. The order disbarring you apparently was modified to the extent of ordering a hearing for the purpose of me making findings, and to that extent at least the matter is open, because if the findings are favorable to you -- and I assume that they are men of good faith, and I have no reason to assume otherwise, despite your statement that the findings will be considered by them arbitrarily.

MR. WILLIAM KLEIN: In view of the fact that they have a presumption of men of standing, and the men are necessarily bound to act that way, I ask that your Honor read the briefs in this case which went to the Court of Appeals, and a brief of twenty-five pages of statement of fact.

THE COURT: The Court of Appeals read those briefs in the case. You made the statement, I assumed, that they were not men of standing.

MR. WILLIAM KLEIN: I can only say that Mr. Klein, who presented the Petitioner's brief, did not deny a single fact or change an inkling of anything that I said.

THE COURT: Your adversary now you will get anywhere before me by making statements derogatory to any one.

MR. WILLIAM KLEIN: That is why I want it on the record.

THE COURT: This case is going to be decided on the merits, and not upon accusations, or character assassination, whether it be my character, or the character of any of the other Judges of this or any other court. You are entitled to your day in court, and I am going to give it to you.

MR. WILLIAM KLEIN: Your Honor cannot give it to me under this order. My day in court will come only if the Judges of the Appellate Division will give me a fair Court, and a Referee, who can

make a report that is effective. Your Honor is powerless to do that. All your Honor can do is to make findings and submit them for what they are worth.

THE COURT: You have your remedy if you do not approve of my findings.

MR. WILLIAM KLEIN: Your Honor cannot deny that I am finally adjudged.

THE COURT: If you have been finally adjudged, then you would be going through a useless procedure.

MR. KLEIN: That is so.

THE COURT: You are not. I have not had one reversal in a trial in the years I have been sitting on this Bench by the Appellate Division, and at least in one case where I sat, where I was cognizant of the fact that the Appellate Divisions in the First Department and Second Department had held otherwise, and I held adversely to them, because the rules of Civil Practice adopted by the four Appellate Divisions provided otherwise than their decisions, and they affirmed me, so I have sufficient belief, or basis for belief that if I do present findings in your favor, they will not be brushed lightly aside.

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MR. WILLIAM KLEIN: I am going to ask that the brief used by the appellant in the Court of Appeals, and the respondent's brief be marked for identification, and I would like to leave with you, in conjunction with this application for disqualification, copies of those briefs.

THE COURT: Have you copies of those briefs?

MR. WILLIAM KLEIN: Yes.

THE COURT: They will be deemed and marked Respondent's Exhibits A and B.

MR. WILLIAM KLEIN: I do not desire to malign any court. I believe I have been maligned. I have been unjustly treated, and I am saying those things solely to square up the record.

THE COURT: Now we will call the score even because you do not desire to malign anyone, but you succeeded very well in doing that on the record here. I still say it would have no effect on my findings. The facts here speak for themselves.

MR. WILLIAM KLEIN: That is not so, the facts of this case do not speak for themselves. I stand on the record, and Mr. Solomon Klein did not deny any of these things.

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THE COURT: I now deny your motion to disqualify me.

MR. WILLIAM KLEIN: I want to make this statement at this point since your Honor denies the application for disqualification, following the rule laid down by the Court of Appeals in re Broome 10 N.Y. 2, reversing the Appellate Division, Second Department, 13 A.D. 2, in which the appellant Broome held that if he stayed on bebore the Referee whom he sought to disqualify, and attended hearings as the Appellate Division below had insisted that he should have done, that he would then have waived is rights of disqualification, and that therefore, he, finding that to be the law in the case, citing these cases, question and question, and including the pointed proposition that a respondent would have no benefit from appearing before such a Referee becauso the Referee might hold that he had seen the witnesses, the demeanor of the witnesses, and therefore his report was binding upon him in that respect; he withdrew from the hearing, and in that respect apparently was sustained by the Court of Appeals, and I must now follow that ruling.

THE COURT: I am not restricting you from the hearing.

MR. WILLIAM KLEIN: I am announcing --

THE COURT: If you want to withdraw from the hearing, that is up to you.

MR. WILLIAM KLEIN: Yes.

THE COURT: As I understand it, your point is, that it is the law that having moved to disqualify me, you have a right to withdraw from the hearing because if you continue with the hearing, you waive your motion.

MR. WILLIAM KLEIN: And I think that claim now pending before the U.S. Supreme Court respecting due process of law obtains, and I cannot afford to be in that condition under the circumstances.

THE COURT: The thought occurs to me that you can continue to do that ad infinitum, and no matter who is appointed to hold the hearings, you can make a motion to disqualify, and then continue to withdraw from the hearing.

MR. WILLIAM KLEIN: Does your Honor impute any bad faith to me in that regard?

THE COURT: When I say this to you, I am speaking impersonally. A person could come before a hearing officer and move to disqualify him on various grounds, and if the motion was denied, and if the hearing officer refused to disqualify himself, then he could say, "I then withdraw from the hearing," and if he was sustained in that, a new hearing officer would be appointed, and he could go through the same proceeding over and over again.

MR. WILLIAM KLEIN: Until justifiably cleared.

THE COURT: But you are running this risk, and I am advising you --

MR. WILLIAM KLEIN: I take no risk. I have already been disbarred.

THE COURT: You are here without counsel. I am advising you, if you do withdraw, you are assuming the risk.

MR. WILLIAM KLEIN: What is that risk by way of definition, since I am without counsel?

THE COURT: The risk is this: that you are waiving a hearing before a justice of the Supreme Court, who has been ordered to hear and

make findings to the Appellate Division. I do not think that they would go through that gesture and take up their time and my time, if they had already in advance made up their mind that no matter what my findings were, or no matter what the hearings would bring forth, that they would adhere to their original decision.

MR. WILLIAM KLEIN: That is my position, your Honor.

MR. LAWLOR: We are prepared to go ahead now, your Honor.

MR. WILLIAM KLEIN: This brief, which is now marked in evidence, Pages 17, I think 40 to 50, contain --

THE COURT: I wanted to continue; provided the motion to disqualify me is made in good faith and on proper grounds --

MR. WILLIAM KLEIN: Yes.

THE COURT: Sitting here impartially and as unbiased as I can be, I tell you that you have not supplied a single ground which I think would be held to be a proper ground for disqualification.

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MR. LAWLOR: This man has moved to disqualify every judge in every court where he has been.

MR. WILLIAM KLEIN: I have been in hundreds of matters, and this man knows differently. This man has said that repeatedly. He has not been able to prove that.

THE COURT: Is there any judge of this Court who you can think you can get a good deal from?

MR. WILLIAM KLEIN: Not in this court, but because of the structural status. I want to be open about my answer. The Bar Association in March, 1963, received charges from certain sources. Judge Benjamin shortly thereafter received a report from the gentleman who was sitting outside when I came in, Mr. Dumont, an eminent member of the Bar, my adversary in those cases, who advised him that he was commanded to take away the case from the Bar Association, and bring this --

MR. LAWLOR: The what?

MR. WILLIAM KLEIN: To take the cases away. You are the only gentleman that I made that statement

to, and you have not at any time contradicted me that any statement that I made was false. Judge, the matter was before the Bar Association --

THE COURT: I am not going to belabor the point. I am simply seeking to give you my viewpoint about your contemplated action, about withdrawing from the hearing. The hearing will proceed whether you withdraw or do not withdraw.

MR. WILLIAM KLEIN: I understand, and your Honor said that he will proceed because the proceeding might go over the time when you come up for another appointment.

THE COURT: No, I did not state that at all because the law provides that I could even continue, and I can hand down a decision in this matter even subsequent to the expiration of my term, so it does not mean a thing one way or the other.

MR. WILLIAM KLEIN: It does, your Honor, insofar as the structural relation is concerned.

THE COURT: And I certainly do not contemplate sitting in this matter from the month of October to December 31st, in your behalf.

MR. WILLIAM KLEIN: I started saying to your Honor, that at least your Honor's appointment --

THE COURT: You see, you are in the habit of misquoting. I never said I wanted this to go over to next year.

MR. WILLIAM KLEIN: Your Honor said something about certification.

THE COURT: No, I said simply this; if this matter had to be disposed of --

MR. WILLIAM KLEIN: In order that it be over before the end of the year.

THE COURT: It is going to be over before the end of the year.

MR. WILLIAM KLEIN: Your Honor said something about certification.

THE COURT: I tell you now I do not know whether I want a certification or not. I will devote every court day that is necessary for this hearing and complete the testimony in this case.

MR. WILLIAM KLEIN: May I respectfully ask two things of your Honor; one, that with respect

to the contents of the last point in this case, considering each and every charge, that they have been shown there to be insufficient on their face and insufficient in fact; number two; because your Honor is going to make a report whether the party is present or not in any event.

THE COURT: Answering your first point, I cannot decide upon the pleadings whether they are sufficient or not; whether the charges are sufficient or not; or whether or not they can be established. There are charges here made to the effect that you refused to answer questions before Judge Baker, which were relevant, and I am here to hear testimony on that and to rule on that only.

MR. WILLIAM KLEIN: If the charges themselves do not speak with sufficiency in law, there is nothing before your Honor, and I submit to your Honor --

THE COURT: They do speak --

MR. WILLIAM KLEIN: You passed upon that already?

THE COURT: Yes, not already. This matter has been pending before me since last September,

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and it is hardly what you would call a snap judgment on the matter.

MR. WILLIAM KLEIN: I did not know that your Honor was passing on the matter because as a matter of fact the Appellate Division never passed on this. We made a motion to dismiss on eleven grounds, and that motion was never opposed by them; and none of the grounds were ever implemented or submitted by them. The second point I am going to make is this: I am going to ask your Honor -- I want to go on and I would like to go on, and I would reconsider this situation of going on, if I find myself cleared of the cloud of final disbarment before I go before so foreclosed a court as your Honor.

THE COURT: Then you do agree with me with the main content of the statement that I made when I said to you before that I will decide this matter conscientiously, and decide it as a Supreme Court Justice should, and anyone who takes this office and does not decide matters that way, is not fit to be a Judge of this Court. You agreed with the latter part of it before.

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MR. WILLIAM KLEIN: I agree with that at all times.

THE COURT: I know but now apparently you are in agreement with the former part of it.

MR. WILLIAM KLEIN: But if these tests of my character --

THE COURT: But I cannot set aside the order of the disbarment. I cannot set aside that judgment of the Appellate Division.

MR. WILLIAM KLEIN: Would your Honor recognize your burden here would be immeasurably alleviated if I came before your Honor even-handed justice, without this cloud hanging over me.

THE COURT: That so-called cloud would not effect me in the slightest degree.

MR. WILLIAM KLEIN: I think you are judicially bound by it.

THE COURT: That is a matter of opinion. I say I would not be bound by it in making my findings unless the evidence substantiated it.

MR. LAWLOR: Are you going to proceed, your Honor?

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THE COURT: I want to know his attitude first.

MR. WILLIAM KLEIN: When your Honor states that he had passed upon the sufficiency of the charges, on their face, did your Honor take into consideration the briefs in this case, or hadn't your Honor done that?

THE COURT: What briefs?

MR. WILLIAM KLEIN: The briefs of the Court of Appeals.

THE COURT: I have seen the briefs of the Court of Appeals. I have seen the decision of the Court of Appeals. I have read the petition that was presented to the Appellate Division which contains the basis of the charges made against you, and I have read the order appointing me, and I say that I have made a determination that the petition presented by either Judge Baker or Sol Klein, which is the basis of your disbarment by the Appellate Division is sufficient on its face to constitute a valid complaint.

MR. WILLIAM KLEIN: Now your Honor stated

a complaint made by Father Judge Baker or by Sol Klein. Let me say this to your Honor. As the record now stands before the U.S. Supreme Court, and as it stood in the Court of Appeals, no report has ever been filed by Judge Baker recommending any charges and the establishing of the order, ordering the Judicial Inquiry on Professional Conduct to come into existence, setting forth that there can be no charges, or substantially setting forth that the valid prerequisite to the existence of any charges against an attorney is the existence of a report which is screened out to secret hearings.

THE COURT: The public can make any charges which can result in the disbarment of an attorney.

MR. WILLIAM KLEIN: I am talking about the validation of the secret hearings.

THE COURT: I hold that on its face the order is a valid order.

MR. WILLIAM KLEIN: What order?

THE COURT: The order of the Appellate Division.

MR. WILLIAM KLEIN: Setting forth the charges?

THE COURT: The order designating me.

MR. WILLIAM KLEIN: I am not talking about that. I am talking about the order setting forth the charges. There is no report setting this forth in the Appellate Division, and I intend to go before the Court of Appeals on that.

THE COURT: Mr. Klein, I am a very patient individual, and I have sat here now for over an hour and thirty-five minutes, and given you the utmost courtesy and attention. I have even stopped your adversary when he sought to interrupt, and I have denied your motions. I state now that my only purpose in sitting here is to hear and report my findings to the Appellate Division. You stated that I should be disqualified because of the reasons outlined in the minutes. I refuse to disqualify myself, and say that you have not furnished a valid reason to the Court why he should be disqualified.

I realize that there is nothing personal in your remarks and therefore I am not prejudiced

against you in the slightest degree. Your remarks did not reflect upon my honesty or integrity, or your statement that you could not get a fair trial before me because of who I am, or what I am, but rather because of external circumstances which I think are not a sufficient basis for my disqualifying myself, because to grant your request would mean that every other Judge would be disqualified on the same basis.

You have stated to me that you believe that the law is to the effect that where a motion to disqualify is made in good faith, and on proper grounds, a party who does not withdraw from the proceeding, is deemed to have waived his motion for disqualification, and, therefore, you intend to withdraw from this proceeding.

I inform you as follows: If your motions were not based upon logical, legal or sufficient grounds, and if you withdraw from this proceeding, the proceeding will continue, and I will have to make my findings upon the evidence adduced by the Petitioner alone. I

would prefer to make my findings upon evidence produced by them and with you having an opportunity to rebut them. I would prefer to have you accorded your day in court. What is your wish in the matter?

MR. WILLIAM KLEIN: I say, Number one, that your Honor should make an effort, however, he will do it, to attempt to have me cleared of a final judgment before I came before your Honor, and failing in that, I must ask leave to withdraw here. I would like an opportunity before your Honor proceeds, to make a motion before the Court of Appeals, with respect to my motion to dismiss the charges which have not even been discussed on the merits.

THE COURT: The question of your remaining here is optional with you. As far as my making an effort with the Appellate Division is concerned, you made the effort. You have made an effort not only in the Appellate Division but also in the Court of Appeals, and I am not empowered to

reverse either of those judicial tribunals.

MR. WILLIAM KAHN: Thank you very much. I beg leave to withdraw.

(The Respondent leaves the Courtroom at 3:40 o'clock p.m.)

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(The following took place not in the presence of the Respondent.)

WILLIAM WEINTRAUB, residing at 2613 Homecrest Avenue, Brooklyn, New York, called as a witness for the Petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWLOR:

Q Mr. Weintraub, are you an attorney?

A Yes, I am.

Q And you have an office at what address?

A 1301 Surf Avenue, Brooklyn, New York, 11224.

Q And for how long have you maintained an office at that address?

A I have been at that address from --

THE COURT: How many years?

THE WITNESS: Since 1935, with the exception of three and a half years between 1942 and 1946, when I was in the Armed Services.

MR. LAWLOR: May I ask that there be marked in evidence, the file of the County Clerk of the County of Queens, 1977-1959, the action in the Supreme Court of Queens County, Leon Berger vs. Fun Fair Park, Inc., & Lijac Amusement Corp., Defendants.

THE COURT: It will be deemed marked in evidence.

(Document received and deemed marked in evidence.)

BY MR. LAWLOR:

Q Mr. Weintraub, did you appear in that action on behalf of the defendant Lijac Amusement Corp?

A I did.

Q Did there come a time when you withdrew as the attorney for Lijac Amusement Corp.?

A That is correct.

Q Can you tell us the date when you withdrew?

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A I cannot, unless you give me something to refresh my memory.

Q I show you a receipt dated November 1, 1961, on your letterhead, and I ask you by referring to that, can youtell us what the paper is?

(Handing to witness.)

THE COURT: Does that refresh your recollection?

THE WITNESS: That does.

THE COURT: What is your answer?

THE WITNESS: November 1, 1961.

BY MR. LAWLOR:

Q What happened on that date?

A My recollection is the appearance at my office of my clients, Ephraim Jacobs and Sylvia Jacobs, who are husband and wife, and Ephraim Jacobs is an officer of the corporation, and on that day I gave them a batch of correspondence in connection with the matter thereon stated, Gerger v. Lijac Amusement Corp.

THE COURT: You have answered the question. Next question.

MR. LAWLOR: May I offer in evidence at this time a certified copy of a third party complaint, summons and complaint in the action of Berger v. Fun Fair Park, third party defendant.

THE COURT: Show it to the witness. Are those the pleadings that you gave them?

BY MR. LAWLOR:

Q And I ask you this --

THE COURT: Are those the pleadings that you gave them?

THE WITNESS: I have no recollection of that as the actual pleadings, Judge. I gave them my file and all the pleadings that I did have at the time.

MR. LAWLOR: May I have this marked in evidence.

THE COURT: Tell me what it is.

MR. LAWLOR: A certified copy of a third party summons and complaint.

THE COURT: What relevancy has it? You have not connected it yet.

MR. LAWLOR: Except that it bears the

cover sheet in the name of Mr. Weintraub, right here (indicating).

THE COURT: Mr. Witness, look at this.

(Handing to witness.)

Whose acknowledgement is on there?

THE WITNESS: It does not have my back on here, Judge. It purports to have William Weintraub here, but it is not my back, Judge.

BY MR. LAWLOR:

Q I show you this complaint, issued in the name of William Weintraub, as attorney for the third party plaintiffs, third party plaintiff Fun Fair Park, Inc., and Lijac Amusement Corp., which is dated February 19, 1962. Did you issue thatsummons and complaint, Mr. Weintraub?

A I did not.

Q It further appears, "William R. Klein, as counsel." Did you employ Mr. William R. Klein as counsel for the purpose of preparing this?

A No.

Q Did you authorize Mr. Klein to use your name?

A No.

Q Did you authorize Mr. Klein to prepare these papers, or having anything to do with the issuance of a third party complaint in your name?

A No, sir.

THE COURT: Were you the attorney for the third party plaintiff?

THE WITNESS: What is the date, Judge?

MR. LAWLOR: February 19, 1962.

THE WITNESS: No, sir.

Q The address stated here is 100 -- 5th Avenue, Borough of Manhattan, Did you ever have an office at that address?

A No, sir.

THE COURT: The address is what, underneath the name of the attorney?

MR. LAWLOR: Underneath the name is the address "100 -- 5th Avenue, Borough of Manhattan."

THE COURT: All right.

Q Did you ever have Mr. William Robert Klein as either your partner or your clerk?

A No, sir.

THE COURT: Did you know him?

THE WITNESS: I did, sir.

THE COURT: How long did you know him?

THE WITNESS: I don't believe I can give the exact date. If my memory could be refreshed, it could only be this, Judge; my client, Lijac Amusement Corp. had a lease at Fun Fair Park.

THE COURT: Did you know him ten years, five years, or five days? Approximately how long did you know him?

THE WITNESS: Possibly five years.

THE COURT: Five years when?

THE WITNESS: Prior to this 1961 date.

THE COURT: Did you ever discuss this case with him?

THE WITNESS: To the best of my recollection, no, not prior to that particular date.

MR. LAWLOR: No further questions.

(Witness excused.)

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MR. LAWLOR: Mr. Dupont, please.

ALBERT A. DUPONT, residing at 100 Regent Drive, Long Beach, Long Island, New York, called as a witness for the Petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWLOR:

Q You are an attorney?

A Yes, sir.

Q And you have been admitted where?

A Second Department, either October or November, 1928.

Q And you presently have an office for the practice of law where?

A 161-19 Jamaica Avenue, Jamaica, Long Island, New York.

Q Mr. Dupont, do you recall in the Supreme Court of Queens County, entitle Berger v. Fun Fair Park and Lijac Amusement Corp.?

A Yes.

Q Did you appear in that action?

A Yes, sir.

Q And is that the same William Robert Klein whose name is on this paper?

A Yes, sir.

THE COURT: You say, did he appear? What do you mean?

BY MR. LAWLOR:

Q Did he purport to appear for Lijac Amusement Corp.?

A Yes.

Q And for Fun Fair Park?

A Yes.

Q As third party plaintiffs?

A Yes, sir.

THE COURT: Did you ever see him in Court in connection with this matter?

THE WITNESS: Yes, sir.

THE COURT: And on what occasion?

THE WITNESS: I have no diary with me, but there were several appearances.

THE COURT: There were motions made?

THE WITNESS: Yes, there were motions made, and conferences in Judge's chambers constantly.

Q Did you appear there for yourself?

A Gottlieb & Schiff are the attorneys of record for the defendant Fun Fair Park, and I was trial counsel.

Q Do you recall the service of a summons and complaint by a third party, and a subsequent motion thereon in the name of William Weintraub?

A I have a vague recollection of that.

Q If I show this to you --

THE COURT: Showing the witness an Exhibit, Petitioner's Exhibit 2.

Q Yes, Petitioner's Exhibit 2.

A Yes. What is the question?

THE COURT: Does that refresh your recollection?

THE WITNESS: Yes, sir.

Q Did Mr. William Robert Klein, the respondent in this proceeding, appear?

A Yes, sir.

Q In that matter?

A Yes.

THE COURT: Proceed.

BY MR. LAWLOR:

Q I show you a motion made by Mr. William Robert Klein, in this proceeding, as the attorney for the third party plaintiffs, and it is addressed to Gottlieb & Schiff, A. A. Dupont, of counsel, attorneys for defendant Fun Fair Park. Do you recall that?

A Yes, sir.

Q And that is the same Mr. Klein --

THE COURT: Did you appear in Court in connection with that motion?

THE WITNESS: Yes, sir.

THE COURT: And he appeared in connection with that?

THE WITNESS: Yes, sir.

THE COURT: Is that the Mr. William Robert Klein who walked out a few minutes ago?

THE WITNESS: I didn't see him walk out, but I saw him walk in.

THE COURT: Let the record show that only one William Robert Klein walked in.

BY MR. LAWLOR:

Q Mr. Dupont, in September and October, 1961, were you engaged as counsel in an action in the Supreme Court, Queens County, known as the Fun Fair Park, Inc. Litigation?

A Yes, sir.

Q And at that time did you represent a Mr. Harry Gilman?

A Yes, sir.

Q I show you a letter that is on the letterhead of William Robert Klein, dated September 19, 1961, and I ask you if you recognize the signature of Mr. Klein on that?

THE COURT: Are you familiar with his signature?

THE WITNESS: Yes, I have had an awful lot of correspondence from him.

THE COURT: The correspondence you have had from him, have you ever discussed the correspondence with him?

THE WITNESS: Yes, sir.

THE COURT: Was he familiar with it?

THE WITNESS: Oh, yes, and also the stipulations that he signed, and various other things, in my presence.

THE COURT: And you saw him write?

THE WITNESS: Yes. And there were subsequent lawsuits. I would say that this is his signature on this exhibit.

MR. LAWLOR: May we offer it in evidence?

THE COURT: Yes.

(Document received in evidence and marked Petitioner's Exhibit 3 and 3-A in evidence.)

BY MR. LAWLOR:

Q I show you a second letter, dated October 1, 196 addressed to Mr. Harry Gilman, which has the typewritten signature of William Robert Klein, on the purported letterhead of William Robert Klein, and can you tell me where you received this letter?

THE COURT: The envelope was postmarked when?

THE WITNESS: The envelope was postmarked October 4, 1961.

THE COURT: Can you recall when you received it?

THE WITNESS: I would say within a couple of months after that. Mr. Gilman delivered this letter to me.

THE COURT: Within a couple of months after?

THE WITNESS: I took a statement from Mr. Gilman at one time, and Mr. Lawlor has that statement, and it will refresh my recollection as to when that was delivered to me by Mr. Gilman.

THE COURT: I will disallow that. That cannot refresh his recollection as to this letter. That can only refresh your recollection as to what Gilman told you.

THE WITNESS: It would also refresh my recollection -- I think he delivered that to me within a couple of days after I delivered that statement.

MR. LAWLOR: I can't subpoena him.

THE WITNESS: Will you give me the date of the statement I took from Mr. Gilman and I can fasten the date of this.

MR. LAWLOR: November 4, 1961.

THE WITNESS: Not that one, sir. I took it by a Court Reporter. Did he do the minutes?

MR. LAWLOR: November 2, 1961.

THE WITNESS: I would say that this letter was delivered to me by Mr. Gilman just shortly before November 2, 1961.

BY MR. LAWLOR:

Q At that time were you representing Mr. Harry Gilman?

A November 2nd? May I refresh my recollection just a moment? At that time there was an action pending in which Kate Gilman and Harry Gilman were parties thereto, and my firm were appearing for Mr. Gilman and his wife, and together with associate counsel of Gottlieb & Schiff, we also represented two other corporations, one known as Fun Fair Park, Inc., and Gator Holding Corporation, which held all the stock of Fun Fair Park, Inc. Harry Gilman and his wife, or their families, were interested in the extent of fifty per cent of the stock of the Gator Holding Corp.

Q At that time, who was Mr. Klein representing in this litigation?

A He was adversary counsel, representing Frances Ursini, John R. Ursini. William Robert Klein was also a party to the action. He was named a defendant in one action, which was pending at that time, one Fun Fair Park, Inc. against Frances Ursini, John R. Ursini and William R. Klein, which is a Supreme Court, Queens County action. He was a defendant in that one. Then he was also in that consolidated action subsequently a plaintiff himself, whereby in that action, which is called Action No. 4, William R. Klein was a plaintiff, and the defendants there were Harry Gilman and Kate Gilman, the Gabor Holding Corp., Max Lander, Frances Ursini, George Whelan and Fun Fair Park, Inc.

Q Mr. Dupont, at that time, did Mr. William R. Klein ask your permission to communicate with your client Harry Gilman, concerning the subject of this litigation?

A No, sir.

MR. LAWLOR: There is no further testimony.

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THE COURT: Is that all you have now?

MR. LAWLOR: Yes, your Honor. I was going to have a number of letters to introduce into evidence.

(Witness excused.)

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THE COURT: It is now much after the hour of our usual adjournment. We will adjourn until tomorrow morning and you can then continue.

MR. LAWLOR: Yes, your Honor.

(Whereupon the proceedings were adjourned to October 18, 1966, at 10:00 o'clock, a.m.)

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SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

IN THE MATTER OF

WILLIAM ROBERT KLEIN,

Attorney,
Respondent.

Brooklyn, New York

October 18, 1966.

B E F O R E:

HON. WALTER R. HART,

Justice.

A p p e a r a n c e s:

SOLOMON KLEIN, ESQ.,
KENNETH LAWLOR, ESQ.,
JOSEPH W. RYAN, ESQ.,
Representing the Petitioner.

WILLIAM ROBERT KLEIN, ESQ.,
pro se.

- - -

LOUIS LEHMAN, C.S.R.
Official Court Reporter.

LL/jlb.

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MR. LAWLOR: If the Court pleases, I would like to make a statement on the record, that ten minutes ago, the respondent William Robert Klein, was present in the Chambers of Justice Hart, in the Office of the Secretary, and I advised Mr. William Robert Klein at that time that this hearing was about to proceed as soon as your Honor came from Special Term Part I, and suggested that he might wish to stay, and he said that he did not wish to stay.

THE COURT: He withdrew yesterday, and stated then his reasons for withdrawing. He stated that he was withdrawing to preserve his rights, after having made a motion to disqualify me, and after having been advised by the Court that he should remain, so we are proceeding now in his absence.

MR. LAWLOR: If your Honor pleases, I wish to put in the exhibits that were before the Court of Appeals, and this bears relation to Charge 8-A of the Petition.

THE COURT: That is the refusal to

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answer the questions before the Judicial Inquiry.

MR. LAWLOR: Yes, your Honor, and I am introducing the minutes of the proceeding before Mr. Justice Baker, and in a memorandum, we will point out those parts where he was directed to answer and refused.

THE COURT: It will be marked in evidence.

MR. LAWLOR: I will mark each of these. I will mark the underlying order.

THE COURT: I will want the minutes, and when I get the minutes and exhibits I will be able to see what is what, and therefore I would like to have them marked.

MR. LAWLOR: If the Court please, may I offer in evidence a copy, a series of orders that I will offer as separate exhibits, directing the Judicial Inquiry to proceed.

THE COURT: Go ahead.

MR. LAWLOR: May I offer in evidence a copy of an order of the Appellate Division, made

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and entered October 9, 1963, directing the Judicial Inqjiry on Professional Conduct to take testimony concerning a certain complaint made by William Robert Klein against members of the Bar, in connection with litigation entitled Fun Fair Park, Inc., against Ursini.

THE COURT: It will be marked.

(Received in evidence and marked Petitioner's Exhibit 4.)

MR. LAWLOR: May I offer as Exhibit 5, a copy of the order of the Appellate Division made December --

THE COURT: Let's get the Exhibit first. Is this paper important, the fact that he made certain charges against members of the Bar?

MR. LAWLOR: Yes, your Honor. It relates to the relevancy of the proceedings before Justice Baker.

THE COURT: You mean the questions asked of him?

MR. LAWLOR: Yes.

THE COURT: I am accepting that only for

that purpose, and not for the purpose of whether the charges be made were false or true.

MR. LAWLOR: No, sir, it only relates to the materiality.

THE COURT: All right.

MR. LAWLOR: May I offer as Exhibit 5, an order of the Appellate Division, made and entered December 19, 1962, creating the Judicial Inquiry on Professional Conduct, together with an order of the Appellate Division, made and entered October 9, 1963, enlarging the jurisdiction of the Judicial Inquiry on Professional Conduct, to all Counties within the Second Judicial Department.

THE COURT: It will be received and marked in evidence.

(Received in evidence and marked Petitioner's Exhibit 5.)

MR. LAWLOR: May I next offer as Exhibit 6, a copy of the letter of the Clerk of the Appellate Division, Second Judicial Department, dated October 10, 1963, addressed to William Robert Klein, Esq., 100- 5th Avenue, New York 10, N.Y.,

in which is enclosed a copy of the order of the Court of October 9, 1963.

THE COURT: It will be received and marked.

(Received in evidence and marked Petitioner's Exhibit 6.)

THE COURT: You are referring now to Exhibit 5, when you say a copy of the order of the Court?

MR. LAWLOR: I believe I am referring to Exhibit 4.

THE COURT: Exhibit 4 relates to the charges against the attorneys?

MR. LAWLOR: That's right.

THE COURT: Go ahead.

MR. LAWLOR: I next offer in evidence as Exhibit 7, a copy of the order of the Appellate Division, Second Judicial Department, made and entered October 30, 1963, amending on the Court's own motion its order of October 9, 1963, to add a recital that the Judicial Inquiry on Professional Conduct was required to investigate the charges of

Frances Ursini, and John R. Ursini, the clients of William Robert Klein, as well as the charges made by Mr. Klein.

THE COURT: The charges of those individuals against Klein?

MR. LAWLOR: Against other members of the Judiciary.

THE COURT: It will be marked.

(Received in evidence and marked Petitioner's Exhibit 7.)

MR. LAWLOR: I now ask that there be marked in evidence the file of the County Clerk of the County of Queens, No. 4078 in the year 1960. It is a proceeding entitled "action in the Supreme Court, Queens County," and reads, "In the Matter of the application of Frances Ursini, John R. Ursini, for an investigation of the facts and circumstances related to the alleged breakdown of the administration of law, order and justice, affecting the proceedings and action entitled--;" and then refers to two pending actions, "Fun Fair Park and Frances Ursini." Motion was made by John R. Ursini, pro se., on behalf

of defendant Fun Fair Park, and as will appear from the minutes, these papers were prepared by the respondent, William Robert Klein.

THE COURT: I assume all these exhibits thus far are being received only for the purpose of determination by me of the relevancy of the questions asked of the respondent before Mr. Justice Baker?

MR. LAWLOR: That is correct, sir.

THE COURT: I am not concerned with the merit of the charges alleged to have been made by Klein or Ursini against the Justices of Queens County.

MR. LAWLOR: That is right, sir.

THE COURT: All right, mark it.

(Received in evidence and marked Petitioner's Exhibit 8.)

MR. LAWLOR: May I next offer as Exhibit 9 the minutes of a hearing before the Hon. Joseph M. Conroy, a Justice of the Supreme Court, Queens County, on March 31, 1960, at which appeared Mr. William Robert Klein, the respondent; John R. Ursini and Albert Dupont, in relation to the application of Ursini, which appears as Petitioner's Exhibit 8.

THE COURT: Mark it.

(Received in evidence and marked Petitioner's Exhibit 9.)

MR. LAWLOR: May I next offer as Exhibit 10 the minutes of the hearing before Hon. William B. Groat, a Justice of the Supreme Court, Queens County, on April 4, 1960, in relation to the application of Ursini, known as Petitioner's Exhibit 8. There were present Albert A. Dupont, William Robert Klein, the respondent, John R. Ursini and Barnett Levy, Esq., of the Attorney General's Office.

THE COURT: It will be received and marked.

(Received in evidence and marked Petitioner's Exhibit 10.)

MR. LAWLOR: May I next offer as a single exhibit, as Petitioner's Exhibit 11, twenty-one letters of the respondent, William Robert Klein, addressed to the Appellate Division of the Second Judicial Department, or to the Justices thereof, in the period between March 23, 1963 and February 9, 1965; and may I add that these were part of the record before the Court of Appeals.

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THE COURT: They will be received and marked as one exhibit.

(Received in evidence and marked Petitioner's Exhibit 11.)

MR. LAWLOR: May I next offer as a single exhibit, Number 12, thirty-five letters addressed by the respondent, William Robert Klein, to the Judicial Conference of the State of New York, or to the Hon. Bertram Wagaan, as Deputy Administrator.

THE COURT: Received and marked as a single exhibit.

(Received in evidence and marked Petitioner's Exhibit 12.)

MR. LAWLOR: I would like to add one thing; these letters are in the period between October 8, 1960 and November 23, 1963.

May I next offer as Exhibit 13, fourteen letters of the respondent, William Robert Klein, addressed to the Hon. Edward G. Baker, a Justice of this Court, or to the Judicial Inquiry on Professional Conduct, in the period between October 23, 1963 to April 29, 1963.

THE COURT: Yes.

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(Received in evidence and marked Petitioner's Exhibit 13.)

MR. LAWLOR: May I next offer in evidence as Petitioner's Exhibit 14, the testimony of the respondent William Robert Klein, before the Additional Special Term of the Supreme Court, County of Kings, Mr. Justice Edward G. Baker presiding, the dates of the appearances, including testimony and colloquy with the respondent, are October 23, 1963, October 30, 1963, January 23, 1964, January 24, 1964 and January 29, 1964.

THE COURT: It will be received and marked in evidence.

(Received in evidence and marked Petitioner's Exhibit 14.)

MR. LAWLOR: If the Court pleases, I would like to offer as Exhibit 15, certain exhibits to which reference is made in the minutes of the proceedings before Mr. Justice Baker, a copy of letter bearing date May 14, 1963, addressed to Governor Nelson Rockefeller, 22 West 55th Street, New York City, signed by Frances Ursini as appears by the minutes, the respondent was questioned regarding same.

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THE COURT: It will be received in evidence and marked.

(Received in evidence and marked Petitioner's Exhibit 15.)

MR. LAWLOR: As Exhibit 16, I would like to offer in evidence a letter of the respondent William Robert Klein, dated October 1, 1963, addressed to Hon. Nelson Rockefeller, Governor of the State of New York, to the attention of Sol Neil Corbin, Esq., consisting of four pages, and which bears the signature of William R. Klein, reference to this letter also appears in the testimony of Mr. William Robert Klein before the Judicial Inquiry.

THE COURT: It will be received and marked.

(Received in evidence and marked Petitioner's Exhibit 16.)

MR. LAWLOR: May I next offer in evidence as Exhibit 17 in evidence, a seven page letter of William Robert Klein, dated September 15, 1961, addressed to Hon. J. Bertram Wegman, Deputy Administrator of the Judicial Conference. Reference to this letter also appears in the minutes before Judge Baker.

A 177

THE COURT: It will be received in evidence.

(Received in evidence and marked Petitioner's Exhibit 17.)

MR. LAWLOR: May I next offer in evidence as Exhibit 18, the photo-copy of a four page letter of the respondent William R. Klein, dated October 12, 1963, addressed to Hon. Nelson A. Rockefeller, Executive Chambers, Albany, N.Y. to the attention of Sol Neil Corbin. Reference to this letter also appears in the minutes of the proceedings before Judge Baker.

THE COURT: Received in evidence and marked.

(Received in evidence andmarked Petitioner's Exhibit 18.)

MR. LAWLOR: If the Court pleases, that is the evidence in connection with the Charge 8-A of this petition.

Next, to proceed to Charge 8-B of the Petition--

THE COURT: Namely?

MR. LAWLOR: That is the charge relating

to the contemptuous refusal of the respondent to appear before Mr. Justice Baker when directed to do so.

THE COURT: Yes.

MR. LAWLOR: May I next offer in evidence as Exhibit 19, the testimony of John E. Ursini given in the presence of the respondent, William R. Klein, who appeared as his counsel, at the Additional Special Term of the Supreme Court, Kings County, Mr. Justice Baker presiding, on November 6, 1963. The purpose of this is to show the Court's statement, directing Mr. Klein to appear as a witness before the Additional Special Term on November 21, 1963, and Mr. William Robert Klein's agreement to do so. This appears at Page 40,030 et seq. of the minutes.

THE COURT: It will be received and marked as an exhibit.

(Received in evidence and marked Petitioner's Exhibit 19.)

MR. LAWLOR: May I next offer as Exhibit 20 a letter of the respondent, William Robert Klein,

dated November 19, 1963, addressed to the Hon. Edward C. Baker, St. George, Staten Island.

THE COURT: Yes.

(Received in evidence and marked Petitioner's Exhibit 20.)

MR. LAWLOR: May I next offer as a single exhibit, a letter of William Robert Klein, dated November 27, 1963, addressed to Mr. John R. Ursini, and together with an envelope showing the hand delivery of the same, which directed his client, Mr. Ursini, not to testify before the Judicial Inquiry on Professional Conduct unless William Robert Klein was present.

THE COURT: Marked as an exhibit.

(Received in evidence and marked Petitioner's Exhibit 21.)

MR. LAWLOR: May I next offer in evidence the minutes of the hearing before Mr. Justice Baker at the Additional Special Term of the Supreme Court on November 21, 1963, by which it appears that Mr. William Robert Klein, the respondent, refused to attend before Judge Baker, as he had been previously directed to do so in response to a subpoena served upon him.

THE COURT: It will be received and marked in evidence as Petitioner's Exhibit 22.)

(Received in evidence and marked Petitioner's Exhibit 22.)

MR. LAWLOR: I next ask that there be deemed marked in evidence the file of the County Clerk of Nassau County in the proceeding in the Supreme Court, Nassau County, Index No. 14697-1964. Fun Fair Park, Inc., plaintiffs, against Frances Ursini et al. defendants.

THE COURT: It will be received and marked.

(Received in evidence and deemed marked Petitioner's Exhibit 23.)

MR. LAWLOR: May I next offer in evidence as Exhibit 24, a certified copy of an affidavit taken, which appears in Exhibit 23, deemed marked, an affidavit of William R. Klein, sworn to December 4, 1963.

THE COURT: So received and marked.

(Received in evidence and marked Petitioner's Exhibit 24.)

THE COURT: We will adjourn at this time for a luncheon recess.

• • •

(Whereupon a recess was taken to 2:00 o'clock p.m.)

LL/jlb.

(Afternoon Session.)

(All appearances the same as heretofore noted.)

(The following transpired in the Chambers of Honorable Walter R. Hart, Justice.)

(Mr. Klein is not present.)

J A M E S F A S T A, residing at 84-17 -- 89th Street, Woodhaven, Queens, New York, called as a witness being first duly sworn, testified as follows:

MR. LAWLOR: If the Court please, I would like to offer into evidence a certified copy of papers filed in the United States District Court, Eastern District of New York, in the matter of Fun Fair Park, Inc., alleged bankrupt, file number in bankruptcy, Number 64-B-267.

THE COURT: What are the papers?

MR. LAWLOR: These papers consist of an order of Chief Judge Zavitt, made March 28, 1964, a Petition of Joseph Alberti, praying for a special reference under Section 21-A,

dated March 19, 1964, a Petition in involuntary bankruptcy.

THE COURT: Of whom?

MR. LAWLOR: Of Funfair Park, Inc., on the Petition of Joseph D. Alberti, Salvatore Deturis and Lijac Amusement Corporation, verified March 8, 1964, a Petition of Harry M. Gilman, dated March 23, 1964, together with a debtor's plan of arrangement—

THE COURT: Petition for what?

MR. LAWLOR: A Petition for a proceeding under Chapter Eleven of the Bankruptcy Act, a statement of executory contracts, an affidavit of Harry Gilman, sworn to March 23, 1964, an affidavit of William R. Klein, as attorney for Funfair Park, Inc. I cannot make the date out; an unsigned order of the Referee in the Bankruptcy; another affidavit of Harry Gilman, sworn to April 23, 1964, an unsigned proposed order of a District Judge, an affidavit of William R. Klein, setting forth that he is attorney for the debtor bankrupt, Funfair Park, Inc., sworn to March 30, 1964, a Petition of Jacob Kind, dated April 1, 1964 and verified the same date, a petition of Joseph V.

Alberti, sworn to April 1, 1964, an answer of Funfair Park, Inc., the above alleged bankrupt by William R. Klein, attorney for the alleged bankrupt debtor. This is dated March 23, 1964, and it is also signed by Harry F. Gilman as President of Funfair Park, Inc., an order of the Clerk, Sidney R. Feuer, Clerk of the Eastern District Court, dated March 8, 1964, ordering that Joseph Alberti, Jr. be permitted to serve process upon an officer of the alleged bankrupt corporation, together with a petition of Joseph Alberti, dated March 18, 1964, and duly verified the same date requesting that Joseph Alberti, Jr., aged 34, be permitted to serve anbrder of the alleged bankrupt corporation in place and instead of the United States Marshal. Then there is a memorandum decision dated April 8, 1964 by the Honorable Joseph C. Zavatt, Chief Judge of the District Court.

THE COURT: Mark it in evidence.

(Document received and marked Petitioner's Exhibit 25.)

MR. LAWLOR: And as Petitioner's Exhibit 26, I offer an affidavit of William R. Klein, a photo copy thereof, filed with the United States District Court, Eastern District of New York, sworn to July 6, 1964.

THE COURT: Mark it.

(Document received and marked Petitioner's Exhibit 26.)

THE COURT: Permission is given to counsel for the prosecution to have the exhibits and return them to the Court with a memorandum.

DIRECT EXAMINATION

BY MR. LAWLOR:

Q Mr. Pasta, showing you Petitioner's Exhibit 25, in evidence, I show you this form, "Involuntary Petition in Bankruptcy." Have you ever seen that form before this time?

A Yes, sir.

Q Can you tell us who prepared that petition?

A I did.

Q Would you tell us the circumstances that brought about your preparation of that petition?

A I represented Alberti, Joseph Alberti, in an action to have refunded $3,000 which he claimed was due him by the City of New York in the taking of part of his leasehold, Funfair Park, and I was also in touch with him about it, and he told me of some difficulties he was having with the Funfair Park as they approached the opening for the season, and he called me one day and he asked me would I come down on a Sunday, that they were going to meet down there with the officers of Funfair Park.

Q When he said "They," whom did he refer to?

A The lessees, concessionaires. And I said I would be glad to come down. So we went down there and I waited around and they were not called. None of this group was called. There were men there who went in to a room, but --

Q In what building was this?

A A building at Funfair Park. I think it was the restaurant building. So he said - he waited around. He said, "I guess we're not going to be called. I'm going to file a bankruptcy petition." So I said, "Well, I can't help you except perhaps to fill it out for you,

but I am not admitted to practice. I can't represent you." He said, --

Q You mean admitted to practice in the Federal Court?

A In the Federal Court. I said, "If you come to my office, I will help you to fill it out."

THE COURT: You are an attorney and counsellor at law, admitted to practice in the State of New York?

THE WITNESS: I am.

THE COURT: But not admitted to practice in the Federal Court?

THE WITNESS: That's right. So, we all went back to my brother John's office in Woodhaven.

Q What is the address?

A 84-01 Jamaica Avenue, Woodhaven, and I got out the forms and I proceeded to fill out as much of it that I could. Then I came to some parts that I could not answer, and neither could they. I said, "What are we going to do now?" Mr. Kind said, "I'll get Klein on the wire."

BEST COPY AVAILABLE

Q Meaning William Robert Klein?

A That's right.

THE COURT: He said, "I'll get Klein on the wire." You did not know who Klein was at that time, did you?

THE WITNESS: Yes, I did. So I said, "Very well." So we called a number and talked to them, and then put me on. And I said, "This is Jim Past a." He said, "Yes, I know." I said, "I'm trying to help Alberti out here. He wants to file a petition in bankruptcy. I don't know anything about these, but I have the form and I want to help Alberti, but I need some information here." Then I said, "I can't go through with this because I'm not permitted to practice in the Federal Court. I am not admitted. Is this all right for me to do?" He said, "Of course it is. You're only filling out a form, a petition." I said, "Very well. This is the information I want," and I read off certain sections of Paragraph Four, I think it is. Three and Four.

Q The information contained in Paragraphs Three and Four of the Petition?

A That's right.

Q You obtained that from whom?

A Mr. Klein.

Q Had you known Mr. Klein before this date?

A Yes, sir.

Q Were you familiar with his voice?

A Yes, sir.

Q Do you know that you were talking to Mr. William Robert Klein on the telephone that day?

A I knew it was him. I recognized the voice as that of Klein. Of William Robert Klein, yes, sir.

Q This information contained in Paragraphs Three and Four of the Petition, will you tell us by examining what specific information you received from Mr. William Robert Klein to aid in preparing that Petition?

A Well, I knew that Alberti said there was $8,000 due him. That much I could put in. But then he supplied the rest, that $8,000 past due and payable under a plan of arrangement confirmed in this Court on

December 31st ---

THE COURT: The question is, what did Klein tell you?

THE WITNESS: He told me this. And for other sums past due and payable, and the same went for Salvator Deturis, only the amount here is $1,300, and the same for Lijac Amusement Corp., for $3,300 past due, etcetera.

BY MR. LAWLOR:

Q And Paragraph Four, what information did Mr. Klein give you?

A It says here, "Within four months next preceding the filing of this petition the said alleged bankrupt committed an act of bankruptcy in that the alleged bankrupt heretofore, to wit, on or about the day, 15th day of January, 1964." He supplied that.

THE COURT: What?

THE WITNESS: On or about the day, 15th day of January.

THE COURT: He did what on that day? What was the act of bankruptcy?

THE WITNESS: Within four months next preceding the filing of this petition the said

alleged bankrupt committed an act of bankruptcy.

THE COURT: Does he say what the act of bankruptcy is?

THE WITNESS: In that the alleged bankrupt did heretofore to wit --

THE COURT: To wit what?

THE WITNESS: Then it follows with the intent to hinder, delay and defraud.

THE COURT: What did he do, create a preference?

MR. LAWLOR: I believe it reads here, "And did make or suffer a preferential transfer in said amount in the value of $15,000 as defined in Subidivision A, Section 60, of the Bankruptcy Act."

THE WITNESS: That he gave me.

Q Was that given to you by Mr. Klein?

A That's right.

THE COURT: How long had you known Klein?

THE WITNESS: Seven or eight years, I guess.

THE COURT: Did Klein say what his position in the matter was?

THE WITNESS: At the time?

THE COURT: Yes.

THE WITNESS: I don't remember.

THE COURT: Did you ask him how he happened to be in possession of this information?

THE WITNESS: Well, I did not ask him, no.

BY MR. LAWLOR:

Q There is a verification. I believe that is your notary stamp?

A Yes.

Q Following the completion of this, what did you do with this petition?

A I gave it to Mr. Kind.

Q Did you file it yourself?

A No, sir.

Q Did you ever see it thereafter?

A No, sir.

Q Before today?

A No, sir.

THE COURT: Do you know who filed it?

THE WITNESS: No, sir, I do not know.

MR. LAWLOR: I have nothing further with Mr. Pasta.

THE COURT: All right.

(Witness excused.)

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J O S E P H V. A L B E R T I, residing at 14 Merrivale Road, Great Neck, New York, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWLOR:

Q Mr. Alberti, I show you, as part of Petitioner's Exhibit 25, a certified copy of a petition in bankruptcy in the matter of Funfair Park, alleged bankrupt. Would you examine that? Does that bear your signature?

(Handing to witness.)

A Yes.

Q Where was that prepared? Who prepared that petition?

A Mr. Pasta prepared it for us.

Q Where was that prepared?

A He prepared it. I don't know where he

prepared it. He came down to the park one Sunday, that's where we all signed it.

Q Did you go back to his office?

A Yes. But then he told me that he couldn't take the case because he's not admitted to the Federal Court, so I volunteered to file it. I paid the $50 in the Federal Court.

Q While you were present at Mr. Pasta's office, did he have any conversation that you know of with William Robert Klein?

A Well, I understand that he was looking for information.

THE COURT: Strike it out. Was Klein present?

THE WITNESS: No. Klein was never present.

Q Did you have any conversation by telephone or otherwise with William Robert Klein?

A With reference to this?

Q Yes.

A No.

Q You took it down for filing?

I believe the filing date appears as March 18, 1964.

A Something like that.

Q When you got to the office of the Clerk of the Eastern District, of the District Court, did you meet anyone there?

A I saw the clerk there, and the clerk said that would have to -- the Marshal would have to serve it, and it would cost me $8.00. I said, "Why can't we serve it?" He said, "You can do that if you want to." So I took it, the papers, back and went to my office and my son came down and picked them up and he was supposed to serve them, and that's all I know about it.

Q Mr. Alberti, do you recall appearing before Judge Zavatt at a Part of the Eastern District Court on April 21, 1964?

A Yes. I don't exactly remember the date. I remember appearing in Court, because I brought the case up, but we were never heard. We were never called in for a hearing.

Q Did you testify?

A I testified, yes. I testified the same thing that I testified there.

Q Did you testify as follows, in answer to questions:

"Q Between the 18th day that this was filed -- "

Referring to Bankruptcy Petition.

" -- how many times did you talk to Mr. Klein about this petition, involuntary petition?

"A Once or twice on the phone, on the telephone."

Is that correct?

A Yes, that's right.

Q "Q Did you tell him that you had already signed one?

"A Yes, we told him we signed them and it was all ready to be filed."

Is that correct?

A That's correct.

THE COURT: Let the record be clear on that. You so testified. Was it true?

THE WITNESS: Yes, it was true.

Q "Q Did you tell him Mr. Pasta had possession of the originals?

"A Yes.

"Q Did he volunteer to go to Mr. Pasta's office and pick it up?

"A He did not say anything, just wanted

to know who had it, and I told him Pasta had it.

"Q He inquired of you who had it, right?

"A That's right, sir.

"Q And you told him Pasta had it?

"A Pasta had it."

Was that correct?

A Yes.

Q Then were you asked the following question:

"Q In any event when he --"

Referring to William Robert Klein.

" -- showed up in Court here and he met you, who made the appointment to meet in this Courthouse the day of the filing, March 18th?

"A He called me and we made the appointment."

A On the phone, yes.

Q Was that a correct statement?

A Correct.

Q Was that true?

A That's true.

Q "Q What time of day did you arrive here?

"A It was in the morning."

Was that a correct statement?

A That's correct.

Q Does that refer to the meeting at the office of the Clerk of the District Court?

A That's right.

Q Now, in fact, did not Mr. William Robert Klein meet you at the office of the Clerk of the District Court?

A He just gave me instructions, because I did not know what to do about it. He gave me instructions where to go, what office to go, what man to see, and I spoke to him and I paid my fee.

Q When you came to the office of the Clerk of the Eastern District Court, did you meet Mr. Klein there?

A Yes. But he did not come with me. I met him downstairs and I went upstairs myself.

Q Then you went upstairs?

A Yes.

Q Then when the Clerk told you about the necessity of using the Marshal for the service of papers, what happened?

A That's the time that I volunteered to have my son serve the papers. My son came to my office and he picked them up and that's all I know about it. The rest of it is very vague.

Q Mr. Alberti, I will show you a petition bearing your name, dated March 18, 1964. Is that your signature on the verification?

(Handing to witness.)

A That's my signature.

THE REFEREE: Referring to what exhibit?

MR. LAWLOR: Referring to part of Exhibit 25.

Q How did you obtain this paper, this petition?

A I got it in the Federal Court, I picked it up.

Q You picked it up in the Federal Court?

A That is right.

Q From whom did you pick it up?

A From the Clerk.

Q This you picked up from the Clerk?

A I don't remember this exactly what I picked up, but I picked up something to put the application in, and he told me to pay $50. That's all I remember of that. It's very vague. I had a stroke and it makes me forget a lot of things.

Q As a matter of fact, didn't you ask Mr. William Robert Klein to prepare this?

A No. Maybe I did, but I remember he refused because he said he did not want to be involved. So I told him, "All right, I'll get Pasta to prepare it for me." And Pasta, not being too well acquainted with this stuff, I think it was Kind who told him to get in touch with Klein, and get any information that he may need, how much money they owed us, because we did not know exactly how much they owed us at the time. They had paid part of it.

Q Mr. Alberti, on April 24, 1964, before Judge Zavatt, were you asked the following questions, and did you give the following answers:

"Q Was it the Clerk of the Court that told you you need another petition in order to serve it by a person not a Marshal? Was that the Clerk who told you that?

"A No."

A That was the clerk.

"Q Who told you that?

"A Klein told me I did not need anybody else, that we could get it served."

A That's right.

Q "Q Klein told you that; is that right?

"A Right."

A Right.

Q "Q Well, now, that paper --"

"THE COURT: When was this that --

"THE WITNESS: The same day.

"Q The same day you filed this answer?

"A The same day I filed this.

"THE COURT: And upstairs in this building?

"THE WITNESS: That's right.

"Q And then did Klein go someplace and prepare a petition for you to sign to allow service by yourself?

"A He did. He must have because I went. I left him that day and I had to go someplace and I came back about an hour later and he had these papers."

Were those questions asked of you and were those your answers?

A I don't remember that very well, because I did not serve the papers. The papers were served by my son.

THE COURT: Did Klein leave you and come back with these papers?

THE WITNESS: Well, I told him I wanted to leave, as a matter of fact, because I was in a rush

to get back to my office.

THE COURT: No matter who left whom, did you meet again?

THE WITNESS: I don't remember that very well.

BY MR. LAWLOR:

Q I will ask you again. You were asked the same day;

"THE COURT: The point we are trying to develop is this. You did not come to the Courthouse with this petition for an order to have somebody else serve it. It was not until after you got here and you filed a petition.

"THE WITNESS: That's right. Then we decided --

"THE COURT: That you were told that it would cost --

"THE WITNESS: Would cost money to file it.

"THE COURT: Money for it to be served. You did not want to do that, so now somebody has to prepare a petttion and proposed order to be signed.

"THE WITNESS: That's right.

"THE COURT: Now, who prepared that?

"THE WITNESS: I had Klein prepare it.

"THE COURT: Klein, and you waited for him?

"THE WITNESS: Yes.

"THE COURT: And do you know where he prepared it?

"THE WITNESS: I don't know because I left him. I had to go to see somebody and I came back and I met him about an hour and a half later in the same building here."

Were you asked those questions and did you give those answers?

A I think so. If they are there, it must be. I don't remember very well.

Q Was that the truth?

A That's the truth, yes. I know he left me and he went.

THE COURT: Were those answers true?

THE WITNESS: Yes, I think so. At the time I remembered. It is long ago. You know my condition now.

BY MR.LAWLOR:

Q As a matter of fact, Mr. Alberti, didn't Mr. Klein bring to you this petition, and this order to be

signed by the Clerk?

A That I don't remember. I don't remember. I know that I spoke to the Clerk and he gave me all the information and I gave him the $50 and that was it.

Q Did you typewrite this?

A No.

Q Do you know where it was typewritten?

A No, I could not tell you.

Q This petition is signed by you?

A Well, I got the petition after it was already made up.

Q Did you type this petition?

A I don't remember typing it.

Q Who typed the petition?

A I had somebody type one of the petitions. I remember I went to a friend of mine. He had his typist do it. It could be because it was in Brooklyn at the time, and I went to this fellow here, a friend of mine, he is an architect and I went upstairs and I told him to type it for me because I didn't want to come back again.

THE COURT: To type what for you?

THE WITNESS: The girl there typed it for us.

THE COURT: To type what?

THE WITNESS: The petition.

THE COURT: What exhibit are you referring to?

MR. LAWLOR: Part of Exhibit 25. It is a petition to permit Joseph Alberti, Jr. to serve the process.

THE COURT: The questions and answers that were read were from what?

MR. LAWLOR: The testimony of Mr. Alberti before Chief Judge Zavatt on April 21, 1964.

THE COURT: Which is not in evidence?

MR. LAWLOR: I am going to offer it in evidence.

BY MR.LAWLOR:

Q As a matter of fact, didn't you tell -- didn't you meet William Robert Klein at the building on the day that you filed the petition in bankruptcy?

A It's possible. I think I did, yes.

Q You so testified before Judge Zavatt?

A That I met him downstairs.

Q And you told the truth when you testified before Judge Zavatt?

A Yes.

THE COURT: You have been ill since then?

THE WITNESS: I had a heart attack and I had a stroke about three months ago.

THE COURT: Your memory at the time you testified was better than it was today?

THE WITNESS: I was in good health then. I retired since then. I had to quit work.

MR. LAWLOR: May I offer in evidence --

THE COURT: The minutes which you have been reading from?

MR. LAWLOR: -- the minutes of the hearing before Chief Judge Zavatt, at which was present the Respondent, William Robert Klein, Albert A. DuPont, and Charles Gottlieb. The hearings were held April 1, 1964 and April 21, 1964. I offer these in evidence as a single exhibit.

(Documents received and marked Petitioner's Exhibit 27.)

MR. LAWLOR: That is all.

(Witness excused.)

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JACOB KIND, residing at 2746 Clubhouse Road, Merrick, Long Island, New York, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWLOR:

Q Mr. Kind, you were, in 1964, a Vice-President of Lijack Amusement Corp.?

A Yes.

Q That was a concession at Funfair Park?

A Right.

Q Did you sign a petition in voluntary bankruptcy, Funfair Park, Inc., the alleged bankrupt? I show you Petitioner's Exhibit 25, in evidence. Is that your signature?

(Handing to witness.)

A Right.

Q Where did you sign this?

A In Mr. Alberti's lawyer's office.

Q His name was what?

A He was just here. I don't remember.

Q Mr. Pasta?

A Mr. Pasta, yes.

Q Were you present at the office when this was prepared?

A Yes.

Q At that time did you make any telephone call to the respondent, William Robert Klein?

A I did.

Q Can you tell us what the circumstances were?

A Mr. Pasta wanted the date when the receiver was appointed to Fun Fair Park, and he wanted to confirm the amount of moneys that we claimed Fun Fair Park owed us.

Q How about this information about a preferential transfer of $15,000 that appears in this petition you signed?

A What does it mean? I don't know.

Q Had you known anything about a preferential transfer of $15,000?

A No, sir.

THE COURT: Why did you call Klein?

THE WITNESS: Because I wanted to get the date.

THE COURT: Why him?

THE WITNESS: At the time he was my attorney and at the time he considered himself a friend of mine, so I called him. I figured he would know the date.

BY MR. LAWLOR:

Q Mr. Klein was representing you, I believe, in some summary proceedings?

A Some summary proceedings which Fun Fair Park brought against me.

Q At that time did you know who Mr. Klein was representing?

A Joseph Ursini, John and Frances, his wife.

Q They were claimants with an interest in Fun Fair Park?

A Yes.

Q Did you know at the time he was representing Fun Fair Park, Inc., the corporation?

A He always claimed that he represented Fun Fair Park, Inc., but however, I didn't know it until the morning we were in bankruptcy Court when he came in with Gilman saying he was representing Fun Fair Park.

Q At the time you signed this petition, did you know that Mr. Klein was representing Gilman?

A No, sir. I don't think he was at the time. This was prior to that.

Q At the bankruptcy hearing, he was representing Gilman?

A The original bankruptcy petition which I signed went into Jamaica, and that was way prior to when we came to New York.

Q I am talking about the one of March 8, 1964, which was filed in the Eastern District.

A Right.

Q At that time did you know who Mr. William Robert Klein was representing?

A No, sir. Except when he came in with Gilman.

Q That was after this date that you learned that he was representing Gilman?

A After, when we filed, right.

MR. LAWLOR: I have no further questions.

THE COURT: What is your connection with the Park?

THE WITNESS: I have about a forty per cent interest in it, in the amusement park.

THE COURT: When you say Klein was your lawyer, you mean in matters other than this?

THE WITNESS: Yes, sir.

THE COURT: Was he your lawyer --

THE WITNESS: Prior that I came to the Park?

THE COURT: Yes.

THE WITNESS: No, sir.

THE COURT: Was he the lawyer for the Park?

THE WITNESS: For the amusement park?

THE COURT: Yes.

THE WITNESS: Originally he was the lawyer for the Park. That's how I got to know him, when I came to the Park. I used him on other matters besides the amusement park.

BY MR. LAWLOR:

Q I believe you said he represented you in summary proceedings?

A He represented me in summary proceedings.

Q Who was the landlord in these proceedings?

A This is still a question, unfortunately.

Q Was it Funfair Park?

A It was brought by Max Lander and Gottlieb and Schiff.

THE COURT: Who was Gilman?

THE WITNESS: Gilman is another officer of the corporation. He's got 50% interest in Funfair Park.

THE COURT: Is he a creditor of the park, too?

THE WITNESS: He claims to be the owner, Gilman.

MR. LAWLOR: If your Honor please, Funfair Park Corp., the stock is half owned by Gilman and half owned by a Max Lander.

(Witness excused.)

- -

THE COURT: What is your contention with respect to these specifications: That Klein represented both sides?

MR. LAWLOR: That William Robert Klein aided and abetted in the preparation of the petition, the involuntary petition in bankruptcy.

THE COURT: Have you proven that he knew that a petition was being prepared? All you have proven is that people called him up and asked him for

information. Not one of them ever said, "We need this information in order to prepare a petition in bankruptcy."

MR. LAWLOR: Mr. Pasta testified that he was preparing it, and that he required the information in order to prepare a petition. And that this information was then furnished. It also appeared in Exhibit 26, the testimony before Judge Zavatt.

In Exhibit 25 there appears here the answer of Fumfair Park, the alleged bankrupt, denying certain allegations of the petition.

THE COURT: Who interposed an answer?

MR. LAWLOR: William Robert Klein, as attorney for the alleged bankrupt.

THE COURT: In other words, your contention is that he assisted in the preparation of the petition saying they were bankrupt, saying they had made a preferential payment, and then he appeared for Fumfair and filed an answer denying the allegation of the petition which he helped to prepare?

MR. LAWLOR: That is right. I have no further evidence to offer at this time.

THE COURT: The hearing is closed.

Although I granted the motion of the Respondent for an open hearing in this matter, I did it upon the theory that we were going to have a hearing with him present. When he withdrew from the proceeding, the Court continued the matter in Chambers, and the hearing is now concluded.

I N D E X. October 18, 1946, P.M. Session.

Petitioner's Witnesses:

Name	Direct	Cross
James Pasta	146	
Joseph V. Alberti	157	
Jacob Kind	171	

* * *

Petitioner's Exhibits:

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RMSfjlb.

INDEX for October 18, 1966, a.m. Session.)

Petitioner's Witnesses:

Name	Direct
William Weintraub	112
Albert A. Dupont	118

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LL/jlb.

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on May 8, 1967

A 217

~~HON. GEORGE J. BELDOCK, Presiding Justice~~
~~HON. HENRY L. UGHETTA,~~
~~HON. MARCUS G. CHRIST,~~
HON. ARTHUR D. BRENNAN, Acting Presiding Justice
HON. SAMUEL RABIN,
HON. JAMES D. HOPKINS,
HON. A. DAVID BENJAMIN,
HON. FRED J. MUNDER, Justices.

In the Matter of William Robert Klein, an attorney.

Solomon A. Klein,

Petitioner;

ORDER

William Robert Klein,

Respondent.

In the above entitled disciplinary proceeding, this court by per curiam opinion and order dated June 29,1965, having granted petitioner's motion to discipline respondent William Robert Klein based upon the charges set forth in the petition of Solomon A. Klein, verified December 16,1964, and having ordered that the said respondent be disbarred and his name struck from the roll of attorneys and counselors at law in the State of New York; thereafter the respondent having moved to vacate said disbarment order and this court by order dated September 29,1965, having granted said motion to the extent of (1) permitting the respondent to interpose an amended answer to said petition; and (2) referring the matter to the Honorable Walter R. Hart, a Justice of the Supreme Court, for hearing and report setting forth his findings upon the issues raised by the petition dated December 16,1964 and the respondent's amended answer; the said Justice having held hearings and thereafter having made and filed his report, dated January 13,1967, setting forth his findings upon the respective charges and having also filed a transcript of the testimony and the original exhibits; the petitioner thereafter, by notice of motion, dated January 30, 1967, having moved: (1) to confirm the report of the said Justice and (2) for denial of respondent's motion to vacate the disbarment order dated June 29,1965; the respondent by cross motion having renewed his motion to vacate the said disbarment order and for other relief;

NOW, upon the said petition verified December 16,1964; the answer of the respondent; the Justice's said report and the findings therein set forth; the said transcript and exhibits; and upon all the papers filed herein and upon the opinion and decision slip of the court herein, heretofore filed and made a part hereof; and Mr. Solomon A. Klein, the petitioner appearing pro se and Mr. William Robert Klein, the respondent appearing pro se; and due deliberation having been had thereon; it is:

A 218

To confirm Referee's report and cross motion denied

ORDERED that the said motion by the petitioner is hereby granted; and it is further

ORDERED that the said report of the Justice and the findings therein as to all the charges be and the same hereby are confirmed in all respects; and it is further

ORDERED that respondent's cross motion is hereby denied in all respects; and it is further

ORDERED that charges (b), (d) and (e) contained in the original petition, verified December 16,1964, be and same hereby are deemed dismissed.

Brennan, Acting P.J., Rabin, Hopkins and Munder, JJ., concur.

Benjamin, J., not voting.

Enter:

Herman M. Pogel

Clerk of the Appellate Division

Nos. 496 and 529. In the Matter of William Robert Klein, an attorney.

Solomon A. Klein, petitioner; William Robert Klein, respondent.

Petitioner has moved (1) to confirm the report of the Justice of the Supreme Court to whom this matter was referred by this court's order dated September 29, 1965 and (2) for denial of respondent's pending motion to vacate this court's prior order, made in this proceeding and dated June 29, 1965, which disbarred him. Respondent has made a cross motion which, in effect, is a renewal of his said pending motion and of other prior applications.

The disbarment order was made after respondent had interposed an answer to the petition, which answer omitted to deny any of the charges of misconduct contained in the petition and only challenged the jurisdiction of this court (Matter of Klein, 23 A D 2d 356, affd. 18 N Y 2d 598, cert. den. 385 U.S. 973, rehearing den. 385 U.S. 1032). The reference to the Justice was a result of respondent's said motion to vacate the disbarment order. The order of reference granted that motion to the extent of (1) permitting respondent to interpose an amended answer to the petition and (2) directing the reference (for hearing and report, with findings).

Respondent interposed such an answer, containing denials of the charges and also several defenses. However, after his preliminary objections before the designated Justice, including ~~a dismissal of~~ an objection to the Justice's qualification to act, were overruled, he withdrew from the proceeding. The hearing thereupon proceeded, with respondent absent, and the Justice has filed his report, finding therein that four of the charges (a, c, f and g) were sustained (charge [a] in part) and the remaining three charges (b, d and e were not. It is this report with which we are presently concerned.

Descriptively, the charges thus found sustained are:

(a) Respondent contumaciously refused to answer questions as a witness on January 24, 1964, at the Additional Special Term of the Supreme Court, Kings County, for Judicial Inquiry on Professional Conduct in Kings County, in violation of his duty as a member of the legal profession; and defied the authority of the court to elicit information within his knowledge relating to (1) the charges which he and certain of his clients had made of alleged misconduct and corruption on the part of various members of the judiciary and certain members of the Bar (as to which charges this court had directed the Judicial Inquiry to hold hearings and to report) and (2) his conduct as a lawyer;

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and he thereby hindered and impeded the Judicial Inquiry (the Justice also found that the charge was not sustained insofar as it was alleged that respondent was guilty of the same misconduct on January 23, 1964);

(c) In an action in the Supreme Court, Queens County, respondent deceived the court and the third-party defendant by preparing and serving a third-party summons and complaint, naming therein a certain attorney as attorney of record for the third-party plaintiff, when in fact that attorney had no knowledge thereof, had not consented thereto and had not been retained by the third-party plaintiff therefor;

(f) In or about October 1961, while appearing for a party in a litigation, respondent communicated with an adverse party therein upon the subject of the litigation, without the knowledge or consent of the adverse party's attorneys; and

(g) Despite the fact that he had been retained as attorney for a certain client, respondent aided in the preparation and filing of a creditors' petition in an involuntary bankruptcy proceeding against that client in March of 1964; gave the petitioning creditors legal advice; and prepared papers for execution and filing by such creditors in the bankruptcy court; and, nevertheless, he thereafter filed an answer to the petition, as attorney for the alleged bankrupt, which answer denied certain allegations in the petition, which allegations had been based upon information provided by him.

In our opinion, the findings as to charges (a), (c), (f) and (g) are supported by the proof and should be confirmed. We also confirm the Justice's findings as to charges (b), (d) and (e) and dismiss those charges. Accordingly, petitioner's motion is granted and respondent's cross motion is denied in all respects.

BRENNAN, Acting P.J., RABIN, HOPKINS and MUNDER, JJ., concur.

BENJAMIN, J. not voting.

May 8, 1967 IN RE WILLIAM ROBERT KLEIN, an attorney
Nos. 496 and 529.

SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT,
CLERK'S OFFICE, BOROUGH OF BROOKLYN, N. Y.

A 221

I, HERMAN M. POGUL Clerk of the Appellate Division of the Supreme Court of the State of New York in the Second Judicial Department, do hereby certify that the foregoing is a copy of the order made by said Court upon the Appeal in the above entitled action or proceeding, and entered in my office on the 8th day of May, 196 7. ~~and that the original record upon which said appeal was heard is hereto annexed.~~

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at the Borough of Brooklyn, this 20th day of February, 196 8

Herman M. Pogul
Clerk.

Supreme Court,
APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

ORDER

SUPREME COURT::APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

In the Matter of WILLIAM ROBERT KLEIN, an Attorney

SOLOMON A. KLEIN

Petnr.

WILLIAM ROBERT KLEIN

Respndt.

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MAR 2 2 03 PM '67
APPELLATE DIVISION
SECOND DEPARTMENT

COUNTY & STATE OF NEW YORK::SS::

WILLIAM ROBERT KLEIN, being duly sworn, says:

I received a copy of answering affidavit(February 21) on March 1,1967. I asked for and received permission to reply.

The affidavit is again most bare, leaving undisputed the giant facts set forth in the cross-motion.Paragraphs 2 and 3 serve only further to emphasize the UNFAIR PATTERN of prosecution, so detailedly set out in the cross-moving papers.

Again, it stands undisputed that Judge Baker never made or filed any Report, against this Petitioner's target. Will this Bench permit such situation to continue? In the face of such status of the record, there is nothing remaining even to transfer to the First Department's Bar Association; and the latter may act upon issue as there standing already joined, if so advised.

Withdrawal from the reference was accompanied by clear demand that the referee, as bound by law, read all the evidence available to the Judicial Inquiry, and lodged in prosecutor's official possession; and that would be self-clearing. No need to take the stand, or to defend against the "charges" existed; the evidence given by the witnesses used, and other evidence on hand, and the rulings of Judge Baker, relative to second half of Charge 8a, all of which was withheld from Judge Hart, and which he abstained from reading, completely exonerated respondent in any event. This is cited solely to show the unfairness of the hearings, ignoring the pointed demonstrations from the entire 1200-page transcript before Hart J., made easily available to him at pp.42-54(Appellant Brief, Ct. of Appeals.) Each enumerated "charge" is analysed; and sets of case authorities and self-cancelling-cut facts in the evidence, are, in each instance, produced for handy reference. Of those eight " charges" of the Petition, Referee Hart has declined to sustain 6 & 1-2, even without same.

Typical of this avoidance of respondent's presented cases, is the Referee's sweeping assertions on p.20, concerning the "confidentiality" of the complaint correspondence, as ground of objection, and legal refusal to testify (pp.15-17 Report Hart J. and his omission to read LEWIS V.ROUX, 222 AD 204 (2nd Dept.), setting forth the broad public policy involved,-all done"without any disrespect intended"(p.13 Report, Hart J.). Judge Baker himself ruled a super-confidentiality (p.39978 JIPC Transcript), attaching thereto, barring even author's acce

SWORN TO BEFORE ME THIS 1st March 1967

Herbert R. Klein

A 223

Proof of Service

County of N.Y. ss:

William Allen being duly sworn, deposes & says

I served a copy of the within notice of appeal upon the

Office of the Corporation Counsel Stephen Allen Esq. by mailing same

[illegible] in a sealed envelope addressed to Council 16 Court St.,

Brooklyn N.Y. on the 1st day of March, 1967, at a Post

Box located at 5th Ave & 42nd St. N.Y.C.

Sworn before me this [illegible] William Allen

day of March, 1967

[illegible]

1967

A 224

SUPREME COURT : APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

58

529

In the Matter
of
The Establishment of a Judicial Inquiry on Professional Conduct, with Respect to Attorneys and Counsellors at Law, in or Having their Offices in or Practising Law in Kings County

---

In the Matter
of
WILLIAM ROBERT KLEIN, an Attorney

SOLOMON A. KLEIN,
Petitioner
WILLIAM ROBERT KLEIN,
Respondent

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FEB 17 9 26 AM '67
SUPREME COURT
APPELLATE DIVISION
2ND JUDICIAL DEPARTMENT

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of WILLIAM R. KLEIN, sworn to the 15th day of February, 1967, the Notice of Motion, dated November 29, 1965, returnable before this Court on November 30, 1965, and the papers thereon, and the decision of this Court, dated December 13, 1965, and the Report of Hon. [illegible] dated January 13, 1967, as Referee herein, and the papers and proceedings had herein, the Undersigned will cross-move to vacate and expunge on [illegible] all proceedings had herein, and renew in connection therewith, the aforesaid Motion, alleging bias and prejudice of this Court, and on each and every part of these proceedings and the transfer up the jurisdiction of the First Department, all that already instituted and undertaken duly, and the subject-matter of without prejudice, as authorized by this Double said decision, and for vacation of that "final" judgment entered herein on the 29th of June, 1965, and for such other and further relief as the nature of the premises herein on the 17th day of February, 1967 at the Courthouse, 45 Monroe Place, Bklyn, at 9:30 A.M.

Dated: New York, February 15th, 1967

Yours etc.

WILLIAM R. KLEIN, Respondent
Pro se
O.& P.O.Address
132 West 43rd Street
Borough of Manhattan
City of New York

TO

Solomon A. Klein
Pro se Petitioner

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SUPREME COURT, APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

In the Matter of WILLIAM ROBERT KLEIN
an Attorney

SOLOMON A. KLEIN

Petitioner

WILLIAM ROBERT KLEIN,

Respondent

County and State of New York, ss.:

WILLIAM R. KLEIN, being duly sworn, deposes and says:

I am the above-named Respondent, IN OPPOSITION.

I make this affidavit in support of cross-motion, in renewal of earlier motion made on my behalf by DUBLIRER AND KLEIN Esqs., Attorneys, Dated November 19, 1965, returned before this Court on November 29, 1965, based upon allegations of bias and prejudice, upon all the grounds therein stated. Thereon this Court made the following decision, after receiving an affidavit of the Petitioner in opposition, and my replying affidavit:

> "Motion by respondent to transfer proceedings to the Appellate Division, First Department, denied without prejudice to renewal after the hearing and report directed by order of this Court, dated September 29, 1965." (Dated December 13, 1965.)

I make this motion, and this affidavit, continuing to reserve all objections first set out, in my application to dismiss the entire proceedings, the disciplinary proceedings as well as the secret-chamber "Judicial Inquiry on Professional Conduct" proceedings, and for their expungement ab initio; then renewed in the so-called "amended answer", verified October 11, 1965, and carried forward in respondent's Appellant's Brief filed in the Court of Appeals, [illegible] and in the United States Supreme Court on petition for certiorari, all of which are on file here, and made a part hereof.

From the outset, respondent has attacked the "final" judgment of disbarment, as a constitutional nullity, as an "Alice in Wonderland" fac-simile, [illegible] (considering it first, and trying it later)

as a "judicial" prosecution, now known to have been "commanded" by a member of this Bench, to be ousted from the Bar Association of the City of New York, where he first ordered its institution, and where issue had already been joined, in Grievance Committee, and was transferred to the local "Judicial Inquiry", with the dire results now evident; so unnecessary for all concerned with such shameless procedures, most dire to me. And the record of these procedures, set out in a 20-page "Statement of Facts" at pp.4-25 of said Appellant's Brief, stands unchallenged and undisputed by this Petitioner, not only in his answering Brief, filed with the Court of Appeals (now a part of the record here on file), but ever since the "final" judgment came in the mails to me on July 1st, 1965 as a matter of absolute surprise, and in Petitioner's numerous affidavits, filed by him with the original appellate and certiorari papers.

However, the disclosures, that have emerged to the surface of these proceedings, since the argument, had on June 6, 1966, when Petitioner confronted the Bench of the Court of Appeals, and failed to dispute a single one of the seriously indicting allegations of that "Statement of Facts" made by Respondent, as adversary [illegible], may perhaps be deemed even more startling. (See annexed Petition for Rehearing before U.S. Supreme Court, dated December 26, 1966) (Exh. A)

Accordingly, on January 11, 1967, I sent to this Court's 9 members, as constituting the Administrative Court, a copy of the annexed letter, calling upon that Body, to expunge its ordered Judicial Inquiry on Professional Conduct proceedings, transcript and all, and to vacate the "judgment" of disbarment as an emanation thereof, on [illegible] motion. That letter speaks for itself, and is true in all respects. No answer of any member of this Bench or of the Presiding Justice has been had, to this day. (Exh. B)

On January 17, 1967, I received in the mails, a copy of the Report of Hon. Walter R. Hart, a Justice of the Kings County Supreme Court, designated to act "as Referee" by this Court's order of September 29, 1965; which designation, he did not accept within the "20 days" required by statute, but only some 70 days later; and

(p 56 Sm)
(p 74 Sm)

which designation he has rejected, denying that he acts as Referee (p.58 sm) when shown the constitutional bar to such acceptance by a Supreme Court Justice, of a reference to report (Art.6, Section 20 N.Y. State Constitution), and brushing off both the designation, as "surplusage" and in his report constituting himself repeatedly as the "Court"). (C.R. pp.5 Report, pp.4,6. The case authorities of the New York Court of Appeals, giving absolute, literal and unwaterable meaning to the Constitutional provisions, cited to the Referee, and appearing in letter annexed to his Report as the last attached Exhibit (pp3-4), are similarly brushed aside as of no application, along with the statutes of the CPLR, requiring acceptance by a Referee within 20 days, and barring a Justice's acceptance in any event. (pp.5-6 Report)

As this Court, originally (despite no contest offered, and virtual default by the Petitioner on our original motion to dismiss (setting forth 11 grounds in Bar and demurrer, of the Petition, and proceedings (JIPC), upon which Petition is, as it alleges, based)), avoided the merits of each of those grounds, by foreclosing this Respondent from implementing same, by submissions of facts and law, so this Referee has followed suit. He has not tested the Petition and the "face" of the charges, nor the evidence upon which the Petition alleges they rest, in the first instance, for their sufficiency in law, as on demurrer, as required when the respondent is in default, by withdrawal, as herein; nor did he require the Prosecutor before him, to come forward with all the evidence obtained by his staff, in his unilateral presentation, which would fill in, or round out the picture, so as to insure the exoneration of this Respondent (as we show in the Point, III, a, and b. of our Appellant's Brief; which the Referee refused to accept and take for (p96 sm) (p.10, Brief) the "whole" exculpative evidence, in the secret possession of the JIPC and this Prosecutor, (which he was finally directed by this Court to show to this Respondent on February 4, 1965), was withheld from the ex-parte hearings; and the Referee himself, when faced with any part of an exhibit, offered by the Prosecution, in support of the "charge", elicited only that part which the Prosecution proffered in its support. This is unfair prosecution, as the U.S. Supreme C...

has now repeatedly held, which the Federal Rules of Procedure, having been amended to require the Prosecution, in a penal case, to surrender all evidence, which it has unearthed in course of its investigation, favorable to the accused. And the U.S. Supreme Court seems to have so held in a 1963 decision, which was most recently involved by the defense, to compel the U.S. Attorney to surrender to the accused's counsel, all letters which came into possession of the U.S. prosecution, and turn over testimony, given by a witness previously to the trial, which could assist the accused. (U.S. v. Fanecca et al, now on trial, in Albany Federal Court, N.Y. Times, Feb. 5, 1967)

The Court of Appeals has held that a default is equivalent to a demurrer (Rodfield v. Critchoy, 277 N.Y. 336, 341; Bullard vs. Sherwood, 85 N.Y. 253 ; and the U.S. Supreme Court has ruled that a default judgment may be entered only after an inquest held, and a prima facie case is made out, based of course upon the necessary allegations of the Complaint or Petition (Petrol v. Public Service 304 U.S. 209; Grociti v. Mtge Comm. 249 App.Div.652; Wilson v. Wilson 3 NYS(2) 526).

Nonetheless, the Report fails to note that the Prosecution failed to offer proof in support of the essential allegations,- Paragraphs First, Second, and Fifth, particularly the one, that Judge Baker was "directed " to "file his Report" (p.11, Report) , and etc. etc. etc. That allegation stood denied by the Answer, and was, and is, thus one of the "issues raised by the pleadings" (p.13, Report) and which the Referee undertook to report on; silence, however, reigned in that crucial, prerequisite , validating respect to sustain the "charges". As the letter of January 11, 1967, addressed to the [illegible] members of this Court states most particularly, and as the Appellant's Brief and Answering Brief and Reply so starkly revealed, NO MOTION was ever made or filed herein, as this Court's files and the clerk of this Court have now repeatedly certified, first to me and then to the Court of Appeals and the U.S. Supreme Court.

The Referee makes this remarkable overall statement in setting forth the principle upon which he reported : (p.19)

> "As a consequence of respondent's withdrawal and non-participation in the proceedings, the evidence adduced by Petitioner stands UNCONTROVERTED, and the Court will therefore concern itself only with the sufficiency of the evidence adduced in support of the charges."

At other parts of the report, the Referee alludes to the "uncontradicted" submission of the Petitioner, in same vein, (p.19, p.25, and p. 31, also)

Thus the Referee used only those portions of the proofs which the Prosecution selected, from all on hand with the CJPC. Judge Baker, in keeping with his rulings made on October 29,30, November 6,1963, and also those on January 23,24,1964, upon my request and objections, against the "Prosecution's" knife-turning antics, withheld any findings or recommendations or apparently even the 1200-page transcript of testimony taken before him, all three of which would constitute his "Report" as defined by the Court's Establishing Order for the CJPC of December 19,1962, and it stands undisputed and admitted that the last enumerated Charge "3 g)" was NEVER presented to the Enquiry or before Judge Baker, as that Establishing Order mentions..

And the Referee thus looked away from those many portions of proofs, appearing in the whole transcript, which had an exonerating, self-schoolling or neutralising effect, in favour of any wrongdoing, and complete contempt and indifference to the cause of reform, and the Administration of Justice.

That "contradictory" or "controverting" evidence has been culled out under each of the heads in Point XXI of Appellants Brief. The Referee's omission's to report on the entire evidence passes over the fact that the entire transcript was placed in front of him, however perfunctorily. Further implementation of the exonerative evidence appears in Respondent's Briefs, submitted before the Referee, and which are hereby made a part hereof.

The Report of the Referee discloses further:

(a) Ruling out as non-existent the major leading charge, on which the disbarment opinion and judgment is based, nonetheless at pp.66-7 assumed that Baker J. had found respondent guilty thereof (which the Court of Appeals had eliminated from the case), and though Baker J. had, clearly made no report of "guilt" or otherwise, (p.18-9 s.m.), the Referee assumed that he had (pp.66-7 s.m.); and indulged himself a broadside at expense of respondent in self-same respect, in like pattern with that of the Prosecution. (p.47,44,45,46 s.m.)

(b) The Referee, faced with uninformative charges 8a and 8f (the only ones he "sustained"), permitted the Prosecutor to supply, by the device of ex parte "Memorandum" (p.36 s.m.) as to Charge 8a, and through a witness (for 8 f), the essential particulars missing in the charges, most vague on their face.

(c) The Referee stated that respondent's "sole reliance" for the legal proposition, that a Supreme Court Justice may not, under Art.6, Sec.20 of the N.Y.St.Const., downgrade his judicial office by acceptance of a refereeship to hear and report, was the "dicta" of "Countryman v.Kerton" when in fact a series of Court of Appeals decisions and opinions of Justice of U.S.Supreme Court et al., were the reliance.

(d) The Referee's interest, profoundly asserted, to protect fellow-attorneys, showed itself on hearing July 29,1966, when he berated the Petitioner for seeking to hasten the proceedings before the Referee, pointing out his insincerity in such rush, with all the records essential to the case still at Court of Appeals in Albany; yet that same haste appeared on October 17,1966, in the mouth of the Referee, unmindful of the fact that all the same original records, for prosecution and that would contain the evidence which would exonerate respondent on all counts, was still in the files of the U.S.Supreme Court in Washington, D.C., where they still are to serve in connection with respondent's Petition for Rehearing for Certiorari. (p.39 s.m.) --- (p Report; pp.45,6,8 s.m.)

The nature of this Prosecution, the withheld proofs, and the obtainment of original action by this Court, by its Order to show cause on non-existent, "Report" alleged of Judge Baker, as now so completely and undisputedly established, requires citing the newest condemnation of the U.S.Supreme Court (in case of falsely obtained conviction) decided February 13,1967, of all prosecutors and prosecutions, practising "by the knowing use of false evidence"; finding that the prosecution had "deliberately misrepresented the truth", the holding that the Constitution "cannot tolerate a state criminal conviction" thus obtained. In that case, the convicted accused was but seven hours away from physical execution, when he won reprieve. This respondent was at once meted out professional death, and he asked this Court to grant "reprieve" on its own motion.

At page 121 of the transcript of his own hearings, the Referee succinctly stated:

> "I will want the minutes (of the JLRC) and see what is what."

He apparently never "saw" them, beyond the "uncontroverted" and selected excerpts therefrom; and he allowed the Prosecutor to select, as to the first charge "8a" (refusal to testify), whatever he chose, and withholding other parts, including obviously exculpatory rulings of Judge Baker, excluding any possibility of "contumacy" in the presiding Justice's mind. The Prosecutor, instead of producing witnesses, live, to show the "contumacy", used the method of a promised "Memorandum"; and that sufficed for the Prosecution and the Referee, in the absence of the Respondent.

MENTON APPEARANCE ACKNOWLEDGED DEC. 17 1963 THROUGH MINUTES OF JAN. 29, 1964

(p.80, - m) The Referee, giving the highest assurances of impartiality, fearlessness, and fairness, (pp.8-9-10 Report), and having previously acknowledged in "total" terms, his agreement (p.6 m) with Respondent that the crim post-judgment function of "hearing" was FUTILE AND without judicial ruledness in any event, (pp.[illegible], 15, c.m., recited on p.[illegible] of the letter of Respondent dated October 19, 1967, attached as the Respondent's Exhibit), began his Report, with a historical statement (as "appears", he refers to "enlargement of time to move with respect to the Petition" "to February 15, 1965" and then omits the fact that motion to dismiss was made within the time allotted by this Court; refers to a demurrer as an "answer", and then adopts the Prosecution's version and the Court's opinion, of June 29, 1965, to proceed to disbarment as natural, from respondent's having "failed to controvert actually, [illegible] "demurrer" document controverting [illegible] of the pattern charge, which could not have been ignored, in the record; yet the Referee blithely declares it "failed to controvert any of the facts alleged in the Petition, but merely challenged the jurisdiction of the Court to entertain it."

Actually there existed no legal need for respondent to produce any evidence before the Referee, the "charges" being without force in any event on their face, and on the face of the evidence

in the custody of the [illegible], the Prosecution, and this Court, via its Referee, as we have repeatedly shown, without dispute in the Brief.

Before turning to the motion "to confirm" of this Petitioner/prosecutor, the Court may be reminded that at each and [illegible] this judgment-structure, is constitutional violation of respondent's rights; and resulting nullity, it is submitted, again.

(a) The authorising Orders for the Inquiry, by their terms exceeding the powers and jurisdiction of JIPC, as defined by the Establishing Orders, and as ruled out by Judge Baker

(b) The Opinion of this Court for disbarment was stricken down, in fundamental respects, by the Opinion of the Court of Appeals, eliminating the major base for the "judgment" of same date.

The prosecution's brash misconduct, in between and subsequent, to bolster this falling structure, set out in the [illegible] verified Petition for Rehearing (at pp.3-7, U.S.Supreme Court), followed naturally upon the original "command", that brought this arrested proceeding to life JIPC, from the Bar Association of City of New York, in New York County. (See p.9, Appellant's Brief, Ct. of App.)

This Court may now, as the judgment-rendering Court, "relieve a party from it, upon the ground of fraud, misrepresentation, or other misconduct of an adverse party". Re Milton Gladstone, Atty. (most recent) Ct. of Appeals, citing CPLR Sec.5015(a)(3)

THE PROSECUTION'S MOTION TO CONFIRM

The pattern of unfair prosecution is continued into the very body of the present motion. The conduct of this Petitioner, noising his claims abroad, to discredit this Respondent, allying himself with the adversaries of this respondent in the Fun Fair camp, and fighting the rulings of Judge Baker, whom he must serve as "aide" under the Establishing Orders, is all set out in the "Statement of Facts," of said Appellant's Brief, undisputed in the Answering [illegible].

That continuing unfairness is to be drawn from his demand for retention of the disbarment judgment, taken together with his adoption of silence as to the following facts:

((see (a) (b) and (c) hereinafter on pp.7a and 8))

(a) [illegible] "specification in numbered [illegible] of nine charges", the major charge, leading, resulted only in the original Opinion for disbarment, being ruled out by the Referee as non-existent, leaving eight, the first five of the enumerated seven, each consisting of two sections, 3a & 3b, 4a & 4b, the first half of the 8a alone being "sustained" by the Referee, 3b and 8a having been withdrawn by the Prosecution, and all the five and half charges being, and remaining not "sustained" by the Referee.

It is this Report, which Petitioner would have this Court sustain and confirm, and nonetheless have the judgment stand intact for disbarment; Cf, Compers v. Buck, 221 U.S. 408, 440.

(b) that the two "charges" (1 1-2) "sustained", in respect of which they stand "sustained" are, in Petitioner not to set forth. Petitioner had to [illegible] the facts to be found in the abstract, and vague, allegations that constituted 8a and 8f, so that no notice of the charge, as presented by the Prosecution was ever brought home to respondent; so that no jurisdiction exists Polak 7 App. Div. (2) 214

In each case, there are facts in evidence to cancel out what the Petitioner swears to, in his moving affidavit; e.g., where reference is made to

> "Respondent, while acting as attorney for Fun Fair Park Inc., (1.8) aided creditors in the preparation of an involuntary bankruptcy proceeding..." (p.4)

Yet the evidence before the Referee is, that, now this respondent was then "prior to March 18, 1964," attorney for Fun Fair Park Inc., but that he represented the Urstadt redemptionary interest in Fun Fair Park Inc.; and that, as to the antithetic world adversaries Gottlieb and Schiff Esqs., and Austin & Dupont, were representing Fun Fair Park Inc. and had been doing so since January 1959, when the clients of Respondent transferred their 100% stockholdings to the clients of said adversary firm. The Referee makes the same error at p. [illegible] lower end); and at p.30, the Referee, however cites Kindl's testimony that respondent had represented his interest [illegible] Fun Fair Park Inc. (i.e., against Gottlieb and Schiff, Esq., that same adversary [illegible] who brought the dispossess proceeding on behalf of FFP Inc.); and he also cites Kindl's testimony, that "he did not know that respondent also represented Fun Fair Park Inc. [illegible] respondent appeared in the bankruptcy Court with Gilman"; for, Gilman was the President, having internal contest with his own attorneys, and then retained respondent for the first time as attorney for Fun Fair Park Inc., to bring relief in Bankruptcy from the ruin of adverse [illegible]

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This was all before the Referee on prosecution's own presentation: Let him explain why, in respect of this charge, never before presented to the JIPC, or Judge Baker, as required of his "aide", - why the Referee did not "sustain" this charge"&c"(p.31)

(c) The Petitioner's abandonment of any further reference to the "Report" of Judge Baker, which, he knows, is pre-requisite to the issuance of any charges growing out of the JIPC.

Here, having originally sworn to the "Report", as made and filed by the Justice presiding over the JIPC, and having achieved the "judgment" of disbarment thereon, would now compound the offence by maintaining the judgment as a blanket ! His actions have, for long, reminded of the words of Lady Macbeth, in Shakespeare's Act V Scene I, when she is seeking to rub off, in vain, the blood of her misdeeds, on her hands, and then recalls, in consolation:

"What need we fear who knows it,
When none can call our power to account!"

The record of the Fun Fair cases shows that the Trial Judge of the Fun Fair cases, now elevated to membership in the high Court, after three years of respondent's extended appearances before him, found this Respondent,

"a man of superb intellectual integrity".

Respondent stands upon the record, which is not strangely missing and suppressed. Petitioner has avoided it down through the proceedings. Respondent welcomes orderly submission before the Bar Association of any charges, de novo, if any can be fairly asserted. The individual, who on March 31,1960, openly stated that he would bring about my disbarment, "if it is the last thing he ever did," had thereafter in open Court, declared that he "knows all the Judges in the Second Department and they all know him"-most brazenly. The present Petitioner-petitioner heard his associate, this Court's confidante-Director of Judicial Administration for 2nd Department in open Court, at Special Term Part I, Supreme Court, New York County, on June 10,1965, say that this respondent "would be disbarred" the

next day, June 14, 1966, the return day for the petition to impose discipline upon this respondent, without any submission to this Court. And it occurred, only 18 days later!

Before closing, it should be mentioned, that adversaries are now exploiting this disbarment matter in the Fed. Fair Debt Collection Practices Act litigation, pending, unsuccessfully, until the JRC for their private purposes.

WHEREFORE, in the interests and furtherance of justice, respondent prays that this Court, of its own motion, as requested, vacate this ill-born judgment, expunge the JRC proceedings, dismiss and transfer to the First Department, the matter of any charges, returning this and the subject-matter to the Bar Association in New York County for such action, in presumption thereof, as may be fitting to that Agency, for discipline, if any like.

Respectful request is also made that this application be referred to the 8-member Administrative Court per se.

Sworn to before me this
15 day of February, 1967.

Eleanor Stevenson

ELEANOR STEVENSON
NOTARY PUBLIC, State of New York
No. 31-3041700
Qualified in New York County
Commission Expires March 30, 1967

Respectfully,
William P. Keevey
William P. Keevey

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND JUDICIAL DEPARTMENT

In the Matter of WILLIAM ROBERT KLEIN, An Attorney.

SOLOMON A. KLEIN,

Petitioner,

WILLIAM ROBERT KLEIN,

Respondent.

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APPELLATE DIVISION
SECOND DEPARTMENT

PLEASE TAKE NOTICE, that upon the annexed affidavit of Solomon A. Klein, sworn to the 30th day of January, 1967 and the report of Hon. Walter R. Hart, a Justice of the Supreme Court, filed with the Clerk of this Court on the 13th day of January, 1967, and upon the pleadings and all proceedings had herein, the undersigned will move this Court at a term appointed to be held on the 17th day of February, 1967 at 9:30 in the forenoon of such day, or as soon thereafter as counsel can be heard, at the Courthouse, No. 45 Monroe Place, Borough of Brooklyn, City and State of New York, for an order confirming the report of the Hon. Walter R. Hart, a Justice of the Supreme Court, and that the motion of respondent to vacate the order of his disbarment made and filed June 29, 1965, be denied in all respects.

Dated: Brooklyn, New York
January 30, 1967.

Yours, etc.

SOLOMON A. KLEIN,
Petitioner Pro Se
16 Court Street
Brooklyn, New York, 11201

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND JUDICIAL DEPARTMENT

- x

In the Matter of WILLIAM ROBERT KLEIN, An Attorney.

SOLOMON A. KLEIN,

Petitioner,

WILLIAM ROBERT KLEIN,

Respondent.

- x

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

SOLOMON A. KLEIN, being duly sworn, deposes and says that:

1. Respondent was disbarred by order of this Court made the 29th day of June, 1965 (23 A D2d 356; affirmed 18 N Y2d 598; cert. denied U.S. Supreme Ct., Dec. 5, 1966; application for rehearing denied, U.S. Supreme Ct., Jan. 16, 1967).

2. In August, 1965, respondent moved this Court to vacate the order of disbarment, for permission to serve an amended answer to the petition in order to put in issue its various allegations and for this Court to set the issues down for a hearing. By order made and filed September 29, 1965, the motion of respondent was granted to the extent of permitting respondent to serve an amended answer upon petitioner and that thereupon the issues raised by the petition and the denials to be asserted by respondent in his answer be referred to Hon. Walter R. Hart, a Justice of the Supreme Court, for hearing and for a report setting forth his findings.

3. Respondent thereafter served his answer, verified October 11, 1965. Pursuant to the order of this Court, after two adjournments, hearings were held October 17 and 18, 1966 before Mr. Justice Hart. At the hearing on October 17, 1966 respondent appeared and requested further adjournment which was denied. Respondent next demanded that Mr. Justice Hart disqualify himself. Upon the Court's refusal to do so, respondent refused to proceed and left the hearing room despite the Court's warning that the hearing would nevertheless continue.

4. The report of Mr. Justice Hart setting forth his findings on the issues was filed with the Clerk of this Court on January 13, 1967. In his report, Mr. Justice Hart has found:

Respondent defied and flouted the authority of the Additional Special Term of the Supreme Court, County of Kings and violated his inherent duty as an attorney and counselor at law by contumaciously refusing to answer material and relevant questions as a witness on January 24, 1964 (Para. 8th, sub-para. (a) of petition).

Respondent commenced a third-party action in the Supreme Court, Queens County without the authority of one of the third-party plaintiffs and used the name of the attorney William Weintraub on process in said action without the knowledge or consent of Weintraub (Para. 8th, sub-para. (c) of petition).

Respondent in or about October, 1961, when appearing for a party in pending litigation, communicated upon the subject of the pending controversy with an adverse party to the litigation then represented by counsel without the knowledge or consent of the attorneys for said adverse party (Para. 8th, sub-para. (f).

Respondent, while acting as attorney for Fun Fair Park

Inc., aided creditors in the preparation and filing of an involuntary bankruptcy proceeding in the District Court of the United States, Eastern District of New York, entitled "In the Matter of Fun Fair Park, Inc., Alleged Bankrupt." and further aided the petitioning creditors in the prosecution of the bankruptcy proceeding by preparing and delivering to the creditors, legal papers which were executed and filed by them with the Clerk of the said District Court. After the petition in bankruptcy was filed and served, respondent appeared on behalf of the alleged bankrupt, Fun Fair Park Inc., and interposed an answer, denying the allegations of paragraph FOURTH of the bankruptcy petition which contained information previously given by respondent to the petitioning creditors (Para. 8th, sub-para. (g).

WHEREFORE, deponent respectfully prays that upon the testimony and evidence received herein, the report of Hon. Walter R. Hart, dated and filed with this Court January 13, 1967, be confirmed and that the motion of respondent to vacate the order of disbarment made and filed June 29, 1965, be denied in all respects.

Sworn to before me this
30th day of January, 1967.

Solomon A. Klein

[illegible]
Notary Public, State of New York
No. [illegible]
Qualified in Nassau County
Term Expires March 30, 19[illegible]

district for the purpose of designating delegates and alternates; that rule 19 of the Rules of the Republican State Committee could not be given the effect of restricting the vote of the residents of the 102nd Assembly District to only such delegates and alternates as might be apportioned to a particular portion of the district of which they might be resident, and that a special primary election in the 102nd Assembly District must be held to determine which delegates and which alternates, out of the total of 22 who had filed designating petitions, would represent the whole district.

John W. Tabner for Edward S. Conway and others, appellants.

Con G. Cholakis for petitioner-respondent.

Elmer M. Rasmussen for Rensselaer County Board of Elections, respondent.

Louis J. Lefkowitz, Attorney-General (*Walter J. Hogan* of counsel), for Secretary of State, respondent.

John J. Clyne for Albany County Board of Elections, respondent.

Order reversed, without costs, on the dissenting opinion at the Appellate Division and matter remitted to Special Term to make provision for a Special Primary Election. No opinion.

Concur: Chief Judge DESMOND and Judges VAN VOORHIS, SCILEPPI, BERGAN and KEATING. Judges FULD and BURKE dissent and vote to affirm on the majority opinion at the Appellate Division.

In the Matter of WILLIAM R. KLEIN, an Attorney, Appellant. SOLOMON A. KLEIN, Respondent.

Argued June 6, 1966; decided July 7, 1966.

Attorney and client — disciplinary proceedings — Appellate Division disbarred appellant attorney who had not denied charges contained in petition in disciplinary proceedings instituted against him, but, upon motion made by appellant to vacate order of disbarment, permitted him to serve amended answer within specified time and thereupon referred matter to Referee for purpose of conducting hearings as to issues raised by petition and denials to be asserted by him and rendering written report thereon — order of disbarment affirmed — although appellant had opportunity to be heard, he did not raise any triable issues prior to entry of order, having failed to interpose answer denying any of charges of misconduct — by granting of motion to vacate to extent specified, he has thus been assured of additional opportunity to be heard — order of disbarment was predicated solely on charges in petition and Court of Appeals has disregarded intimations in Appellate Division's opinion of another charge not contained in petition.

***Matter of Klein*, 23 A D 2d 356, affirmed.**

APPEAL, on constitutional grounds, from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered June 29, 1965, which, in a disciplinary proceeding instituted by petitioner-respondent, unanimously directed that appellant be disbarred from practice as an attorney and counselor at law of the State of New York. The disciplinary proceeding was commenced by order to show cause dated December 17, 1964. The petition charged appellant with misconduct in that (1) he contumaciously refused to answer questions at a Judicial Inquiry conducted at an Additional Special Term of the Supreme Court, Kings County, violated his duty to be candid and frank with the court and defied its authority to inquire into, and elicit information within his knowledge relating to, charges made by him and certain of his clients of alleged misconduct and corruption on the part of members of the Judiciary and the Bar and relating to his conduct and practices as a lawyer, (2) he willfully failed to appear as a witness under subpœna pursuant to the direction of the Justice presiding at said term and instructed a client to refuse to testify when the latter appeared as a witness thereat, (3) in an action in the Supreme Court, Kings County, he prepared and served a third-party summons and complaint in the name of a specified attorney as attorney of record for the third-party plaintiff when, in fact, said attorney had not been retained to prosecute the action and did not know of, or consent to, the use of his name, (4) he solicited legal business from a named person and attempted to induce said person to discharge his attorneys in a pending action and retain him in their stead, (5) he solicited legal business for another attorney, (6) while appearing for a party in pending litigation, he communicated with an adverse party without the knowledge or consent of the latter's attorneys, and (7) although he had been retained as attorney for a specified corporation, he aided in preparing and filing a petition by creditors thereof in an involuntary bankruptcy proceeding against it and thereafter appeared in the proceeding as attorney for the alleged bankrupt and filed an answer to the petition therein, denying allegations

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thereof based upon information furnished by him. On January 6, 1965 appellant served a pleading which did not contain any denial of the factual allegations of the petition but specified 11 objections thereto, the last of which was that it was "insufficient to constitute a statement or notice of charges, as required by law, or to enable [him] to make or prepare [an] answer thereto." On January 13, 1965, upon appellant's application, the Appellate Division enlarged until February 16, 1965 his time to make such motions in the proceeding as he might be advised. By motion returnable May 28, 1965 petitioner-respondent sought an order imposing discipline upon appellant upon the ground that he had not denied the charges against him and the time within which he could have made motions addressed to the petition had expired. This motion was granted in the order of disbarment. By order entered September 29, 1965, the Appellate Division granted a subsequent motion by appellant to vacate the order of disbarment to the extent of permitting him to serve an amended answer within a specified time and thereupon referring the matter to a Referee for the purpose of conducting hearings as to the issues raised by the petition and the denials to be asserted by appellant and rendering a written report setting forth specific findings as to said issues (see 24 A D 2d 726, app. dsmd. 17 N Y 2d 729).

William R. Klein, appellant in person.

Solomon A. Klein, respondent in person.

Per Curiam. The Appellate Division was warranted in ordering the appellant's disbarment. Although the appellant had the opportunity, accorded by subdivision 2 of section 90 of the Judiciary Law, to be heard, he did not raise any triable issues, prior to entry of the order of disbarment, since he failed to interpose an answer denying any of the charges of misconduct leveled against him. The Appellate Division has granted his motion to vacate such order to the extent of giving him permission to file an answer and referring the issues raised by the answer to a Justice of the Supreme Court for the purpose of conducting a hearing and rendering a report (24 A D 2d 726). The appellant has thus been assured of an additional opportunity to be heard.

It should be noted that the order of disbarment, as its recitals demonstrate, was predicated solely on the charges contained in the petition and, accordingly, in reaching our decision herein, we have disregarded the intimations in the Appellate Division's opinion that the appellant made "baseless written charges against members of the judiciary and members of the Bar" in view of the fact that the petition does not contain such a charge.

The order appealed from should be affirmed, without costs.

Chief Judge DESMOND and Judges FULD, VAN VOORHIS, BURKE, SCILEPPI, BERGAN and KEATING concur.

Order affirmed.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, *v.* WILLIAM ELFE, Appellant.

Argued June 7, 1966; decided July 7, 1966.

Crimes — coram nobis — application to set aside judgment convicting defendant, upon his plea of guilty, of attempted grand larceny in second degree was made upon ground that defendant, indicted for grand larceny in second degree and possession of dangerous weapon, was coerced into entering plea of guilty — order which denied application, without hearing, reversed and case remitted for hearing — factual allegations that defendant was coerced into pleading guilty by threats made directly to him by Judge and District Attorney are sufficient on their face to require hearing.

People v. Elfe, 23 A D 2d 959, reversed.

APPEAL, by permission of an Associate Judge of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered May 27, 1965, which affirmed an order of the Supreme Court (IRWIN D. DAVIDSON, J.), entered in New York County, denying, without a hearing, an application by defendant for a writ of error *coram nobis* to set aside a judgment of the former Court of General Sessions of New York County, rendered February 17, 1942, which convicted defendant, upon his plea of guilty, of the crime of attempted grand larceny in the second degree. In support of his application defendant alleged that he was coerced into entering the plea of guilty; that, on or about December 8, 1941, he entered a plea of not guilty to an indictment charging him with the crimes of grand larceny in the second degree, arising out of his alleged theft of an automobile, and possession of a dangerous weapon; that, on or about December 11, 1941, he appeared for trial and, while "waiting for the trial to begin", was told by the District Attorney that he should plead guilty to attempted

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

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It appears further that the proceeding for the disciplining of respondent was instituted on the petition of Solomon A. Klein, verified December 16, 1964, upon the charges set forth therein. By order of the Appellate Division dated January 13, 1965, respondent's motion to enlarge his time to move with respect to the petition was granted and his time extended to February 15, 1965. Respondent interposed what purportedly was an answer wherein he failed to controvert any of the facts alleged in the petition but merely challenged the jurisdiction of the court to entertain it. Thereafter petitioner, by notice of motion dated May 20, 1965, moved to discipline the respondent for acts of professional misconduct alleged in the petition and respondent cross-moved to dismiss it. Petitioner's motion was granted, the cross motion denied and respondent was ordered disbarred on June 29, 1966 (23 A D 2d 356). Thereafter respondent moved to vacate the order of disbarment and for permission to serve an amended answer in order to put in issue the allegations of the petition and to set them down for a hearing. Respondent's motion was granted only to the extent of permitting him to answer and referring the matter to the undersigned in the order of reference heretofore referred to.

The matter was first noticed for hearing for January 3, 1966 by notice dated December 21, 1965 (hereto attached). On receipt of the notice of hearing with proof of service the undersigned caused a letter dated December 21, 1965 (copy attached) to be sent to Dublierer and Haydon, Esqs., the then attorneys for respondent, advising them of the hearing date. On January 3, 1966 neither respondent nor his attorneys appeared, the transit strike then being in

progress. The undersigned phoned respondent's counsel and advised Mr. Haydon that the matter was adjourned to January 17, 1966 and that the court expected both sides to proceed on that date. (s.m. 4) On January 6, 1966 there was received a copy of a stipulation relieving Dublierer and Haydon as attorneys for respondent, which provided that thereafter he would proceed pro se. On January 7, 1966 petitioner wrote to respondent advising him of the adjourned date and that the matter was marked peremptorily for hearing on January 17, 1966 (copy attached). A similar letter dated January 7, 1966 was also addressed to Dublierer and Haydon, Esqs. (copy attached) and they, by letter dated January 10, 1966, replied they no longer represented respondent. On January 12, 1966 a letter was received from respondent indicating a request for an adjournment pending an appeal to the Court of Appeals from various orders (copy attached). Respondent thereafter obtained a stay of the hearing, which stay was continued by the Court of Appeals until the determination of the appeal from the order of disbarment but which dismissed the appeal from the order of reference on the ground that it was a non-final order (17 N.Y.2d 729). On July 7, 1966 the order of disbarment was affirmed (18 N.Y.2d 598).

On July 11, 1966 petitioner served a new notice setting the hearing down for July 20, 1966. This was accompanied by a letter (copy attached) from petitioner advising respondent that the matter was merely being set down for conference to arrange for a date for the taking of evidence. At the conference the court fixed the hearing date for October 17, 1966 at 2 P.M., respondent having

requested that date so as to complete his application for certiorari to the United States Supreme Court. At the conference the court stated:

> "But as far as the date is concerned, we will proceed upon that date unless there is a stay granted by the United States Supreme Court, or unless they have granted your application for certiorari and the matter is then pending before the United States Supreme Court." (s.m.36.)

On October 7, 1966 the court caused a letter (copy attached) to be sent to respondent advising him that the matter was on for hearing on October 17, 1966 at 2 P.M. Thereafter a letter (attached) dated October 11, 1966 was received from respondent advising that the papers in the application for certiorari was incomplete. Thereupon the court caused a letter dated October 14, 1966 (copy attached) to be sent to respondent advising him that unless the hearing had been stayed it would proceed as scheduled on October 17, 1966.

On October 17, 1966 the parties appeared before the court in chambers. Respondent first requested that the hearing be public and the court stated that the request would be granted (s.m. 42, 55, 76). Respondent then stated:

> "Having presumed that this matter be private, I would like to prepare for the public hearing to be held and I presume that application is denied." (s.m. 43.)

The alleged purpose of the application for the adjournment was to complete certification of the record so as to attempt to secure certiorari and to make certain motions in the Court of Appeals. However, the court was informed that Mr. Justice Harlan on two occasions denied respondent's application for a stay; that Judge Fuld and Judge Burke also refused

to stay the hearings. (s.m. 62; see also memoranda from Clerk of the United States Supreme Court dated September 2, 1961 and October 5, 1966, copies of which are hereto attached). The court stated:

> " * * * I will take under consideration the withholding of my findings after the termination of these hearings until the Supreme Court has ruled upon your argument. I do not say I will. I will take that under advisement, if the Supreme Court of the United States has either accepted or rejected the application now pending before it; so that no harm will be done until they decide in your favor or against you; but as far as the Court of Appeals is concerned, you had ample opportunity when you were up there to raise every Constitutional point that you saw fit to raise, but I cannot at this belated date, thirteen months after the matter was referred to me, adjourn the matter further." (s.m. 71, 72.)

Respondent then argued that the court was barred from hearing the matter since the order of reference was to "Honorable Walter R. Hart, a Justice of the Supreme Court, as Referee for the purpose of conducting hearings * * *"; that Article VI, section 20, subdivision 4 of the Constitution of the State of New York provides that a Justice of the Supreme Court may not act as a referee in any action or proceeding. This contention was rejected, the court stating that the order referred the matter to the undersigned "a Justice of the Supreme Court" and that the words "as Referee" were surplusage. In any event, the Appellate Division, Second Department in Westchester County Bar Association v. Alfano (N.Y.L.J., 12/8/65, p. 1) and the Appellate Division, Third Department in re Common Council of the City of Albany v. The Town Board of the Town of Bethlehem, 26 A D 2d 230, have held that the Constitution

was not violated by the making of such an order. Respondent relies on Countryman v. Norton, 21 Hun 17, but the view in that case is clearly dictum.

Respondent also urged that CPLR 4313 is a bar to the proceeding before the court. This contention was rejected by the court which held that the statute was inapplicable.

Respondent then applied to the court to disqualify itself:

> "Upon the grounds, Number One; that your Honor has been a confrere of Judge Benjamin, who is charged herein, and has been a colleague of yours in the Supreme Court of Kings County, on the Bench, I assume, for a period of years, and that the effect of these charges is to give and effectuate a vindication of the Judge without his having to submit to charges which still stand unpleaded.
>
> THE COURT: I am not going to hear any testimony concerning the truth or falsity of any charges against Judge Benjamin. I make that ruling now.
>
> MR. WM. KLEIN: I understand that.
>
> THE COURT: I am only going to hear and report with respect to the matters set forth in the order designating me, and as far as Judge Benjamin being a former colleague of mine is concerned, he is a former colleague virtually of every Judge of this Court, and every Judge of this Court would be disqualified. Judge Beldock is also a former colleague of mine. Judge Ughetta is also a former colleague of mine.
>
> * * *
>
> THE COURT: They would not influence my decision one iota. If they do not establish their case, they do not establish it."
> (s.m. 76-77)

The ensuing colloquy appearing in the record is set forth in extenso:

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"MR. WILLIAM KLEIN: Your Honor undertakes this reference at a time when he is subject to renewal of your appointment at the end of this year, at the hands of the Appellate Division, who is a party to this case, a party before the Judicial Conference of the State of New York, for having failed to make an investigation, which was followed by that Court and its eight members, and one of the charges was against one of the Judges, and he disposed of the charges which were made against the Court itself, before the Judicial Conference, as follows --

THE COURT: I made that statement together with the statement that I did not want this matter to go beyond the end of this year, at the time I granted you your adjournment, and I said I did not want it to go beyond the end of this year because I have not made up my mind whether I will seek a certification, and that goes now -- whether I will seek a certification for another two years.

MR. WILLIAM KLEIN: Your Honor did not so state at the time on the record. I don't remember that.

THE COURT: Whatever I stated for the record is on the record.

MR. WILLIAM KLEIN: Is your Honor now going to hasten the proceedings in order that your Honor will not be subject to that question?

THE COURT: What question?

MR. WILLIAM KLEIN: As to whether or not you will have a certification at the end of the year.

THE COURT: What I have to prove to the Appellate Division is that I am in good health and of sound mind. As far as my health is concerned, I feel I am all right, but as far as being of sound mind, well, that is something else." (s.m. 78-79)

* * *

"THE COURT: As I sit here now, I want to tell you frankly that I have no opinion whatsoever with respect to this matter. I have no regard for any human being on the face of God's earth to such an extent that that regard would prompt me to do an injustice to a fellow member of the Bar. I think if you will trace my career at the Bar, and my reputation, you will find that I have defended more lawyers than any single lawyer in this City of New York, as far as being

influenced by any external factor is concerned, I can assure you that I will not be influenced in the slightest degree by former associations or by future possibilities.

I am here to do justice, and anybody who accepts appointment or election, or a nomination for a Supreme Court Judge, who is not inspired by the purpose of doing justice, then he is not deserving to be here.

MR. WILLIAM KLEIN: I agree.

THE COURT: I sat here very patiently and I have been patient, I think, with you.

MR. KLEIN: I agree with you, with that portion of that." (s.m. 80-81)

* * * *

"MR. WILLIAM KLEIN: I say to your Honor that the structural relationship of this situation with the Court that has appointed you, and that makes you the Referee to hear and report, is adversary to me in the pending proceedings. I am talking about the parent Court.

THE COURT: Who is the adversary?

MR. WILLIAM KLEIN: The eight member bench." (s.m. 84)

* * * *

"MR. WILLIAM KLEIN: * * * If your Honor will now do this; if your Honor will privately say this, apply to the Court for vacation of the judgment against me so that I can appear before you equally and originally, I have a readiness to go on.

THE COURT: I have no power to do that, I have no power in that regard." (s.m. 87)

* * * *

"MR. WILLIAM KLEIN: That is not all I have. I have already stated that your structural relationship to the parent court is in effect the same here as the prosecution in relation to the parent court, in which you are a servant of that Court and you are a referee and not a Judge.

THE COURT: I will tell you now; I am not a servant of anybody and of no Court, and I decide cases in this court even though on the appeal I may be reversed. If I think the interests of justice require the decision which I make, the record will show that is what I do.

MR. WILLIAM KLEIN: And I think your Honor has done that very often but I say this, that in the present status of this matter, your Honor is powerless and helpless to do anything.

THE COURT: I am not powerless. I am a Justice of the Supreme Court. I am here to make my findings. If I make my findings, I will state them in sound language as my mind dictates. If the Appellate Division does not follow it, you have your remedy.

MR. WILLIAM KLEIN: I have no remedy." (s.m. 88-89)

* * * *

"THE COURT: This case is going to be decided on the merits, and not upon accusations, or character assassination, whether it be my character, or the character of any of the other Judges of this or any other court. You are entitled to your day in court, and I am going to give it to you.

MR. WILLIAM KLEIN: Your Honor cannot give it to me under this order. My day in court will come only if the Judges of the Appellate Division will give me a fair Court, and a Referee, who can make a report that is effective. Your Honor is powerless to do that. All your Honor can do is to make findings and submit them for what they are worth.

THE COURT: You have your remedy if you do not approve of my findings.

MR. WILLIAM KLEIN: Your Honor cannot deny that I am finally adjudged.

THE COURT: If you have been finally adjudged, then you would be going through a useless procedure.

MR. KLEIN: That is so.

THE COURT: You are not. I have not had one reversal in a trial in the years I have been sitting on this Bench by the Appellate Division, and at least in one case where I sat, where I was cognizant of the fact that the Appellate Divisions in the First Department and Second Department had held otherwise, and I held adversely to them, because the rules of Civil Practice adopted by the four Appellate Divisions provided otherwise than their decisions, and they affirmed me, so I have sufficient belief, or basis for belief that if I do present findings in your favor, they will not be brushed lightly aside.

MR. WILLIAM KLEIN: I am going to ask that the brief used by the appellant in the Court of Appeals, and the respondent's brief be marked for identification, and I would like to leave with you, in conjunction with this application for disqualification, copies of those briefs.

THE COURT: Have you copies of the briefs?

MR. WILLIAM KLEIN: Yes.

THE COURT: They will be deemed and marked Respondent's Exhibits A and B." (s.m. 94-96)

Upon the denial of the motion by the court to disqualify itself respondent then stated he would withdraw from the defense of the proceeding since if he participated therein it would be held that he waived his right to assert the basis of his claim that the court was disqualified. Respondent cited for the alleged validity of his position the holding of the Court of Appeals in Matter of Broome, 10 N.Y.2d 942, reversing 13 A D 2d 617. (s.m. 97-98) The following colloquy then appears in the record:

"THE COURT: The thought occurs to me that you can continue to do that ad infinitum, and no matter who is appointed to hold the hearings, you can make a motion to disqualify, and then continue to withdraw from the hearing.

MR. WILLIAM KLEIN: Does your Honor impute any bad faith to me in that regard?

THE COURT: When I say this to you, I am speaking impersonally. A person could come before a hearing officer and move to disqualify him on various grounds, and if the motion was denied, and if the hearing officer refused to disqualify himself, then he could say, 'I then withdraw from the hearing,' and if he was sustained in that, a new hearing officer would be appointed, and he could go through the same proceeding over and over again.

MR. WILLIAM KLEIN: Until justifiably cleared.

THE COURT: But you are running this risk, and I am advising you --

MR. WILLIAM KLEIN: I take no risk. I have already been disbarred.

THE COURT: You are here without counsel. I am advising you, if you do withdraw, you are assuming the risk.

MR. WILLIAM KLEIN: What is that risk by way of definition, since I am without counsel?

THE COURT: The risk is this: that you are waiving a hearing before a justice of the Supreme Court, who has been ordered to hear and make findings to the Appellate Division. I do not think that they would go through that gesture and take up their time and my time, if they had already in advance made up their mind that no matter what my findings were, or no matter what the hearings would bring forth, that they would adhere to their original decision.

MR. WILLIAM KLEIN: That is my position, your Honor." (s.m. 98-100)

* * * *

"THE COURT: Is there any judge of this Court who you can think you can get a good deal from?

MR. WILLIAM KLEIN: Not in this court, but because of the structural status. I want to be open about my answer. The Bar Association in March, 1963, received charges from certain sources. Judge Benjamin shortly thereafter received a report from the gentleman who was sitting outside when I came in, Mr. Dumont, an eminent member of the Bar, my adversary in those cases, who advised him that he was commanded to take away the case from the Bar Association, and bring this"--

* * * *

"THE COURT: I am not going to belabor the point. I am simply seeking to give you my viewpoint about your contemplated action, about withdrawing from the hearing. The hearing will proceed whether you withdraw or do not withdraw.

MR. WILLIAM KLEIN: I understand, and your Honor said that he will proceed because the proceeding might go over the time when you come up for another appointment.

THE COURT: No, I did not state that at all because the law provides that I could even continue, and I can hand down a decision in this matter even subsequent to the expiration of my term, so it does not mean a thing one way or the other." (s.m. 101-102)

"THE COURT: Mr. Klein, I am a very patient individual, and I have sat here now for over an hour and thirty-five minutes, and given you the utmost courtesy and attention. I have even stopped your adversary when he sought to interrupt, and I have denied your motions. I state now that my only purpose in sitting here is to hear and report my findings to the Appellate Division. You stated that I should be disqualified because of the reasons outlined in the minutes. I refuse to disqualify myself, and say that you have not furnished a valid reason to the Court why he should be disqualified.

I realize that there is nothing personal in your remarks and therefore I am not prejudiced against you in the slightest degree. Your remarks did not reflect upon my honesty or integritry, or your statement that you could not get a fair trial before me because of who I am, or what I am, but rather because of external circumstances which I think are not a sufficient basis for my disqualifying myself, because to grant your request would mean that every other Judge would be disqualified on the same basis.

You have stated to me that you believe that the law is to the effect that where a motion to disqualify is made in good faith, and on proper grounds, a party who does not withdraw from the proceeding, is deemed to have waived his motion for disqualification, and, therefore, you intend to withdraw from this proceeding.

I inform you as follows: If your motions were not based upon logical, legal or sufficient grounds, and if you withdraw from this proceeding, the proceeding will continue, and I will have to make my findings upon the evidence adduced by the Petitioner alone. I would prefer to make my findings upon evidence produced by them and with you having an opportunity to rebut them. I would prefer to have you accorded your day in court. What is your wish in the matter?

MR. WILLIAM KLEIN: I say, Number one, that your Honor should make an effort, however, he will do it, to attempt to have me cleared of a final judgment before I came before your Honor, and failing in that, I must ask leave to withdraw here. I would like an opportunity before your Honor proceeds, to make a motion before the Court of Appeals, with respect to my motion to dismiss the charges which have not even been discussed on the merits.

THE COURT: The question of your remaining here is optional with you. As far as my making an effort with the Appellate Division is concerned, you made the effort. You have made an effort not only in the Appellate Division but also in the Court of Appeals, and I am not empowered to reverse either of those judicial tribunals." (s.m. 109-112)

Thereupon respondent withdrew and the proceeding continued. Evidence was adduced on October 17, 1966 and October 18, 1966. Subsequently respondent transmitted a letter dated October 20, 1966 (attached hereto). Thereafter he was permitted to make copies of the transcripts of the minutes in chambers and to examine the exhibits that were submitted. He thereafter filed briefs which are herewith transmitted. Certiorari was denied by the United States Supreme Court (see letter of Clerk of Court dated December 5, 1966).

As a consequence of respondent's withdrawal and nonparticipation in the proceedings the evidence adduced by petitioner stands uncontroverted and the court will therefore concern itself only with the sufficiency of the evidence adduced in support of the charges.

Respondent in his answer set forth numerous alleged affirmative defenses which in the main purport to raise issues of law which are not within the province of this court.

THE ISSUES RAISED BY THE PLEADINGS AND THE EVIDENCE ADDUCED IN SUPPORT THEREOF

The issues raised by the pleadings and the evidence with respect thereto are as follows:

Paragraph Fifth of the petition alleges that by order of the Appellate Division, Second Department, entered October 9, 1963 as amended by an order entered October 30, 1963, the Judicial Inquiry was directed to conduct an investigation before Mr. Justice Edward O. Baker into charges made by respondent and his clients Frances Ursini and John R. Ursini of alleged misconduct and corruption on

the part of the judiciary and members of the Bar in connection with the litigation in an action entitled "Fun Fair Park, Inc., et al v. Frances Ursini et al."; that Mr. Justice Baker was directed to take testimony under oath and file his report with respect thereto. The amended order of October 30, 1965 in evidence (Ex. 7) recites that it was predicated upon complaints having been filed by William R. Klein and his clients Frances and John R. Ursini in various communications addressed to "The Court, the Governor of the State of New York, and others, complaining about and demanding an investigation of alleged misconduct and corruption on the part of members of the judiciary and members of the Bar in connection with the Fun Fair litigation."

Paragraph VIII of the petition in seven specific subdivisions charges that the respondent has been guilty of corrupt, illegal and unethical practices and professional misconduct and conduct prejudicial to the administration of justice in his office as an attorney and counsellor-at-law. (This paragraph and the charges contained therein are denied in paragraph Fourth of the answer except that respondent admitted that prior to March 1964 he had been retained as attorney for Fun Fair, Inc.).

Charge (a)

> "Respondent's contumacious refusals to answer questions as a witness on January 23, 1964 and on January 24, 1964 at the Additional Special Term of the Supreme Court, Kings County, violated his inherent duty and obligation as a member of the legal profession and his duty to be candid and frank with the Court; and defied and flouted the authority of the Court to inquire into and elicit information within respondent's knowledge relating to respondent's

charges and the charges of his clients Ursini of alleged misconduct and corruption upon the part of Members of the Judiciary and members of the Bar, and relating to his conduct and practices as a lawyer. By his contumacious refusals to answer the aforesaid questions the respondent hindered and impeded the Judicial Inquiry directed by this Court into the charges made by respondent and his clients as aforesaid."

The minutes of the hearing before Mr. Justice Baker (Exhibit 14) indicated that respondent appeared and testified before the court on January 23, 1964. The testimony and colloquy (the latter consisting of a great portion of the record) is contained in pages 40, 229 to 240, 379. Questions were addressed to respondent concerning communications and letters sent by him to the Governor and to the Judicial Conference. Respondent refused to testify with respect to these documents on the ground that they were confidential (pages, 40, 370, 40, 372 - 40, 377).

There was no direction by Judge Baker that respondent as a witness answer the questions. In my opinion, therefore, respondent's refusal to answer the questions on January 23, 1964, was not contumacious.

However, on January 24, 1964, the transcript before Mr. Justice Baker discloses the following:

"COUNSEL TO INQUIRY: May I have marked for identification a letter, dated September 15, 1961, consisting of seven pages, on the stationery of Mr. William Robert Klein and bearing the signature of William Robert Klein, addressed to J. Bertram Wegman.

THE WITNESS: Now, if your Honor please, I am going to refuse to proceed. I will object most strenuously to it on the ground that any paper addressed to the Judicial Conference, which has a confidentiality in my opinion far superior to the confidentiality of the Judicial Inquiry, and that that paper may not be used in this inquiry and that the possession of that is

an illegal possession, and I have already served notice upon Klein that his continued custody and possession of that will be a matter for liability --

THE COURT: I will overrule the objection.

THE WITNESS: (Cont'g.) -- and personal suit.

THE COURT: I will overrule the objection.

THE WITNESS: I will say now that I will not proceed and I will refuse to answer any questions with respect to that on the ground that I have a confidence in my client and a confidence in the Judicial Conference which I may not violate.

THE COURT: I will overrule it and direct that it be marked for identification.

(Marked Exhibit 4181 for Identification)

THE COURT: Evidently, the question which you have posed here was considered by the people who sent us this document, namely, the Judicial Conference or the Appellate Division, or the Conference by direction of the Appellate Division. We just didn't pull this out of the air.

THE WITNESS: May I say to your Honor --

THE COURT: So that we feel that it is proper that we have it before us and evidently so does the Appellate Division feel that way.

THE WITNESS: May I say to your Honor that the Judicial Conference now has before it, or has before it returnable soon, a paper -- papers all prepared --

THE COURT: We've got this document. I have ruled that it is properly before the Court. You say it is not.

THE WITNESS: I am awaiting the ruling of the Judicial Conference where it is being directly made, and I trust, in deference to that, we go into other matters but not at this point have this done in violation of a possible ultimate ruling.

THE COURT: I think we should proceed.

THE WITNESS: I am going to refuse to answer any questions with respect to it. And I object to the handling of this paper in this court.

Q I show you Exhibit 4181 for Identification, Mr. Witness, and ask you whether that is your signature?

(Extended to Witness)

A I refuse -- if this is the paper that you have identified as addressed to the Judicial Conference of the State of New York, I refuse to answer on the ground that it is a violation of confidence.

COUNSEL TO INQUIRY: I ask your Honor to direct him to answer.

THE COURT: I so direct.

THE WITNESS: And I refuse in the light of that, until I submit this question to another court.

THE COURT: All right.

THE WITNESS: Another forum.

There is no question in my mind here that was being sought to be done and I am now speaking as counsel; that this is an attempt to crowd me into an embarrassing position.

THE COURT: No.

THE WITNESS: Yes. And on the basis of which Mr. Klein will in one way or another begin some kind of prosecution. I want to say this to your Honor at this point. Mr. Kenneth Lawlor served me with papers and I think it is pertinent on this question -- Mr. Kenneth Lawlor served me with papers on a certain date, to wit, October 21, and --

THE COURT: Just a minute, Mr. Klein. I can't go on --

THE WITNESS: Judge, I am an attorney as well as making statements on behalf of my clients.

THE COURT: I have made my position clear. I cannot possibly go on with this if you are going to stop and make long statements every two minutes. It is going to be impossible.

THE WITNESS: This is fundamental, Judge.

THE COURT: I know it is fundamental and I have ruled on it and if I am wrong, I am wrong. You have refused to answer. I have been asked to direct that you do answer, and I so direct. If my ruling is wrong, it is wrong. But, so far as I know up to now, it is perfectly proper and I will direct that you answer the question.

Q Mr. Witness, I now show you what is here Exhibit 4180 for Identification, a letter addressed to Hon. Nelson Rockefeller, and I ask you whether that bears your signature?

A I refuse to answer on the same ground; that I will not violate the confidence of client or the Governor or my professional status -- or with the Judicial Conference.

THE COURT: On the same basis that I directed that you answer the other question which was with relation to the other exhibit, I will direct that you answer this one. And you continue in your refusal?

THE WITNESS: In my refusal on the grounds that I have stated and with due deference to the Court, without any disrespect intended. And upon a disposition -- and upon an adequate disposition of this ruling, I shall comply.

Q I now show you, Mr. Witness, what is Exhibit 4147 for Identification, which is also a letter addressed to Governor Nelson Rockefeller, dated May 14, 1963 and I ask you whether you prepared that letter?

A I refuse to make any statement with respect to letters addressed either to the Judicial Conference or to the Governor or to an agency of the Judicial Conference upon the same grounds, violation of confidence of client and the Judicial Conference and the Governor.

THE COURT: On the same basis that I directed that you answer the other questions, I will direct that you answer this one.

THE WITNESS: And my response in that connection is the same; in deference to an adequate ruling on the subject, I shall not comply.

Q Mr. Witness, you heard me read earlier this morning the paragraph of the Appellate Division order which recites that you, having heretofore addressed various communications to this court, to the Governor of the State of New York, and others, complaining about and demanding an investigation of charges of alleged misconduct and corruption and that, therefore, it is ordered that testimony be taken under oath with respect to your charges?

A Yes, and I find that you are not doing that.

Q You have a copy of this order, isn't that right?

A I find that you are not doing that.

Q Do you have a copy of this order, do you not? It was served on you, is that correct, sir?

A I do.

Q Despite that order, you refuse to answer the questions that I propose, is that correct?

A I am going to act in complete compliance of the order and not despite the order. That order does not state that the papers of the Judicial Conference shall be used here in conjunction with attorneys.

THE WITNESS: At this point I also want to make another observation as a matter of law, Judge.

THE COURT: In connection with --

THE WITNESS: In connection with this objection to my violating confidence. That under Sections 212, 213 and 214, I think of Article 7 of the Judiciary Law, the right to make complaints to the Judicial Conference is prescribed to presumably citizens and/or their attorneys, attorneys in their own right, as well as citizens, and that is a confidential communication respected as such, made to the Judicial Conference; that that right may not be violated by any other agency or body." (Ex. 14, pp. 40, 421-40, 428)

FINDINGS AS TO CHARGE (a)

On the uncontradicted evidence I find that this charge is sustained insofar as it relates to January 24, 1964. It is apparent from the foregoing that the conduct of respondent in refusing to answer questions as directed by the court, which were clearly relevant and material and within the purview of the orders of the Appellate Division of October 9 and October 30, 1963 was contumacious. He defied and flouted the authority of the court which was directed by the orders to inquire into and to elicit information within his knowledge relating to his charges and the charges of the Ursinis of alleged misconduct and corruption upon the part of a member of the Judiciary and of the Bar as set forth in the letters to the

Governor (Exhibits 15 and 18) and the Judicial Conference (Exhibits 12, 13, 16 and 17). I further find that by his misconduct, respondent violated his duty as an attorney-at-law to cooperate with the court in the investigation of the charges made by him and his clients. The conclusion is inescapable that respondent's claim that these documents were insulated from interrogation and investigation by the cloak of confidence is fictitious. It was he and his clients who transmitted these letters, seeking this very investigation which resulted in the orders of the Appellate Division directing the inquiry. There is no statute, nor are there any case law decisions, which afford letters of complaint of misconduct of judicial officers or members of the Bar, with the privilege of confidentiality. While respondent referred to Sections 213 and 214 of the Judiciary Law as justification for his position, a review of those statutes fails to disclose any basis, reasonable or otherwise, for his contention. In any event, he should have complied with the direction of the court and his failure to do so constituted the misconduct charged in the petition.

Charge (b)

"That in addition to and wholly apart from respondent's contumacious refusals to testify, respondent wilfully and contumaciously obstructed and impeded the Additional Special Term by a course of conduct deliberately calculated to delay and mislead the Court sitting at such Additional Special Term, by his wilful failure to appear on November 21, 1963 as a witness under subpoena pursuant to the direction of the Justice presiding at such Additional Special Term, and by instructing his client, John R. Ursini, to refuse to testify as a witness when said John R. Ursini appeared before the Additional Special Term as a witness pursuant to subpoena."

As appears from the transcript of the minutes before Mr. Justice Baker, pursuant to subpoena, respondent appeared

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on October 23, 1963 and the matter was adjourned at his request to October 30, 1963, at which time he refused to testify unless certain conditions were met. The court stated it would report this fact to the Appellate Division. However, on November 6, 1963, respondent accompanied his client, John R. Ursini, who was called as a witness and testified before Mr. Justice Baker. Respondent was present in the courtroom and was consulted by his client and participated in the proceedings. (Exhibit 19) At that time, respondent consented to return to testify on November 22, 1963 (page 40, 014) and Ursini's testimony was continued to November 25, 1963 (s.m. 40, 032). On November 19, 1963, respondent wrote to Mr. Justice Baker advising him that he had been unable to examine certain records in petitioner's office and that he was scheduled to go to California and Honolulu on business for a client and that under the circumstances he and Ursini would not appear to testify. Respondent failed to appear at the hearing on November 21, 1963.

Petitioner marked in evidence before this court an affidavit verified December 4, 1963, in New York County, in a proceeding pending in Nassau County Court, in support of an application for an adjournment of a motion to punish him for contempt on the ground that he was about to leave for a trip to California and Honolulu (Exhibit 24). So it is evident that petitioner was available to testify on November 21, 1963, as he had agreed to do. The court, however, is unable to determine on this record whether the conduct of the respondent in this facet of the matter materially impeded the inquiry before Mr. Justice Baker in view of the fact that respondent did appear, was sworn, and gave some testimony on January 23, 1964.

As noted heretofore, John Ursini was directed to return on November 25, 1963 for a continuation of his examination. The record fails to disclose whether he appeared on that date. Petitioner caused to be marked in evidence a letter from respondent to Ursini urging him to refuse to testify on the ground that his attorney was out of town (Exhibit 21). In this letter, respondent wrote inter alia,

> "Therefore, in no event, should you (if called upon, when I am absent, out of town, to swear and testify, WITHOUT YOUR LAWYER, AND WITHOUT FIRST HAVING HAD CHANCE TO PREPARE WITH INSPECTION OF THE RECORDS, WHAT TESTIMONY YOU WOULD HAVE TO GIVE) testify; it being clearly declared by the Appellate Division, Judge Baker and even by Mr. Klein, when pressed, that you, and your wife, Frances, and I, are the complainants, and only charges made by these three are being the subject for report, and support and NOTHING ELSE. Don't ALLOW anyone to take you OFF this COURSE.
>
> "The proofs, and the specific charges are matters of law, for which you need legal guidance, in selection, to begin with. Later, on the details of what, you may recall, happened at any particular day or place, that is entirely different -- when that time comes! But that can properly be, only when a Body, hearing the charges you may -- solely against a Judge when you wrote to the Judicial Conference, Wegman, or to the Appellate Division, as an agency of Judicial Conference - takes over, properly.
>
> "Stand by the ADVICE of this letter, in my absence; and Mr. Klein or Mr. Lawlor, for whom Klein has already repeatedly APOLOGISED, will not, or at least, should not DARE TO SEPARATE YOU FROM YOUR LAWYER (as they both attempted on Nov. 6th, when they tried to pull you in to their office).
>
> "Sincerely,
>
> /s/ William R. Klein
>
> "P.S. Do not try, or take chances on being your own lawyer!!"

A fair reading of this letter causes me to come to the conclusion that this letter was intended as advice from

a lawyer to a client to await his return and counsel at the hearing. In any event, this letter did not impede, as alleged in the petition, the investigation, since it was disclosed in the minutes of the hearing of January 23, 1964 (Exhibit 14) that Ursini, in respondent's absence, did appear and testify.

FINDING AS TO CHARGE (b)

I do not find that the conduct of respondent in failing to appear before Mr. Justice Baker on November 21, 1963 materially impeded the inquiry before Mr. Justice Baker in view of the fact that respondent did appear, was sworn and gave some testimony on January 23, 1964. Petitioner has failed to demonstrate that respondent's non appearance on November 21, 1963 materially impeded the inquiry before Mr. Justice Baker. It is my further finding that petitioner failed to establish that respondent was guilty of any misconduct by advising his client to refuse to testify as a witness unless he was accompanied by counsel.

Charge (c)

"In an action in the Supreme Court, County of Queens, respondent deceived the Court and Lloyd's London, a third-party defendant therein, by preparing and serving a third-party summons and complaint in the name of William Weintraub, an attorney of record for the third-party plaintiff, when in fact William Weintraub had not been retained by third-party plaintiff to prosecute its action and the use of his name as such attorney was without the knowledge or consent of the said William Weintraub."

Respondent, by paragraph Fifth of his answer, denied this allegation (except the allegation that prior to March 1964, he had been retained as attorney for Fun Fair Park Inc.).

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Upon the hearing, William Weintraub testified as follows: That he is an attorney-at-law with offices at 1301 Surf Avenue, Brooklyn, since 1933. In an action in the Supreme Court, Queens County, entitled "Leon Berger v. Fun Fair Park Inc. and Lijac Amusement Corp.," he had appeared for the last named defendant. On November 1, 1961, he turned the file in the action over to Ephraim and Sylvia Jacobs, Ephraim being an officer of the Lijac Amusement Corp. Thereafter, a third-party summons and complaint, dated February 19, 1962, were issued in the names of Fun Fair Park Inc. and Lijac Amusement Corp. as third-party plaintiffs, against Lloyd's London as third-party defendant. The summons and third-party complaint were subscribed

"William Weintraub,
William R. Klein (of counsel)
Attorney for third-party plaintiff"
O. & P.O. Address
100 Fifth Avenue
Borough of Manhattan
City of New York"

(Exhibit 1; Queens County Clerk No. 1977/1959)

Weintraub testified that he did not employ William R. Klein for the purpose of preparing the summons and complaint, did not authorize him to use his name, and that he, Weintraub, was not the attorney for the third-party plaintiffs on February 19, 1962, nor did he have an office at 100 Fifth Avenue. Respondent had never been a partner or a clerk of the witness (s.m. 112-119).

Austin A. Dupont testified that he was trial counsel for Fun Fair Park Inc., for Gottlieb and Schiff, the attorneys of record. He had seen respondent in court in connection with the action on motions and conferences in Judge's Chambers (s.m. 119-122).

Exhibit 1 in evidence (Queens County Clerk's file #1977-1959) reflects that a motion was made by the third-party defendant to dismiss the complaint, one of the grounds being that respondent was not authorized to appear for the third-party plaintiffs. Dupont who had appeared in the action as trial counsel for Gottlieb and Schiff, attorneys for Fun Fair Park Inc. in an affidavit on the motion supported the position of Lloyds, the third-party defendant, that respondent did not represent Fun Fair. The motion was granted solely on the ground of insufficiency.

FINDING AS TO CHARGE (c)

On the uncontradicted evidence while it does not appear that the court or any party to the action was "deceived by respondent's misconduct", it was established that respondent proceeded in Weintraub's name without his consent and without the authority of Fun Fair, Inc.

As to charges (d) and (e) petitioner concedes that no proof was adduced on the hearing before the court to establish either one of the charges. Accordingly, they should be dismissed.

Charge (f)

"Respondent in or about October 1961, when appearing for a party in pending litigation communicated upon the subject of the pending controversy with an adverse party to the litigation then represented by counsel without the knowledge or consent of the attorneys for said adverse party."

This allegation was denied by paragraph Fourth of the answer.

To sustain the charge, Austin A. Dupont testified as follows: That prior to November 2, 1961, when certain letters marked in evidence as Exhibits 3 and 3A, were transmitted by respondent, there was an action pending involving parties named Kate and Harry Gilman. Gottlieb and Schiff, with whom the witness was associated, represented the Gilmans and also Fun Fair Park Inc. and Gabor Holding Corp., which held all of the stock of Fun Fair Park Inc. The Gilmans were interested in 50% of the Gabor Holding Corp. corporate stock. Respondent at that time represented Frances and John R. Ursini, the owners of the remaining 50% of the stock, as adverse parties and he, too, was a party to the action. Respondent was also at that time a named defendant in another action brought by Fun Fair Park, Inc. against the Ursinis and respondent. Then respondent, in a consolidated action, was a plaintiff and defendants were Harry Gilman, the Gabor Holding Corp., Max Lander, Frances Ursini, George Whalen and Fun Fair Park Inc. Under date of September 19, 1961, on respondent's stationery, the Ursinis wrote to Mr. Harry Gilman a letter which was marked "approved" and signed by respondent as follows:

> "Following conversation had with you, relative to your readiness to withdraw from the Fun Fair Park situation, and all connection with the pending litigation, and subject only to your first making offer to withdraw to your associate Max Lander, we hereby present you with an offer to reacquire from you, your shares reimbursing you, whole for all due you by reason of your outlays, as you agreed in conversation this day, so that you may first and at once make such offer to Mr. Lander, under such obligations as you may feel you should have to an associate, as you stated, and get his refusal.
>
> This offer is made to you, of course, in good faith, as was your offer, so us, believed to have been made by you, and it is approved by our attorney.
>
> We await an early response from you, without delay, and thanking you, we remain,..."

In a letter dated October 1, 1962 sent to Harry Gilman, respondent wrote as follows:

> "Of course, as I told you, I am quite preoccupied with Fun Fair, and I am working hard to wind that up, as you also desire that, so that you can get back your money, and we both get through. By the way, I have not heard from you on the Ursini offer; we are ready to put up the money on the whole deal, get you your money out, but Gottlieb is not carrying out your instruction, as you and I agreed, accepting my advice of September 28th, after we left the ADC Board. I gave you that legal advice in the same sincerity with which I have guided you in all things so far, believing that you really want to end the FFP cases. It is my further advice to you that your interests as a potential landlord, and Gottlieb's client as tenant of FFP INC., are not being truly free of conflicting advices, and that in view of the fact, that you have a private indemnity agreement with Lander, only to make you whole, he could be interested in running up litigation costs, to keep it alive for his own profit, with his attorney Gottlieb standing with him, and careless of you. That is natural, and you can direct, as the principal signatory to the Basic Agreement, and demand he stop. He is bound to follow your direction, just as I follow yours on business situations, when you so direct. I would not be fair to you, unless I gave this advice.
>
> And I have so advised the Court, in our common interest.
>
> Sincerely
>
> William R. Klein
> k/s [signature typed]
>
> P.S. Some vague word came to me regarding El Commandente track, involving you..... anything to it? Please speak with me about it, if you wish."

Mr. Dupont testified at the hearing that respondent did not request permission to communicate with his client, Harry Gilman, concerning the subject matter of the litigation then pending. The letters were turned over to him by his client just shortly before November 2, 1962.

FINDINGS AS TO CHARGE (f)

On the uncontradicted evidence I find this charge is sustained.

Charge (g)

"Prior to March, 1964, respondent had been retained as attorney for Fun Fair Park, Inc. In the period between March 8 and March 18, 1964, respondent aided in the preparation and filing of a petition by creditors in an involuntary bankruptcy proceeding in the District Court of the United States, Eastern District of New York, entitled, 'In the Matter of Fun Fair Park, Inc., Alleged Bankrupt', and further aided the petitioning creditors in the prosecution of the bankruptcy proceeding by rendering to them legal advice, and by preparing and delivering to such creditors legal papers which were executed and filed by them with the clerk of said district court. Following the aforesaid conduct by respondent, he thereafter appeared as attorney for the alleged bankrupt, and filed an answer to the petition of the creditors, denying certain allegations thereof based upon information furnished by him."

In support of this charge, petitioner called James Pasta as a witness, who testified as follows: He is an attorney and counsellor-at-law permitted to practice in the State of New York, but not in the Federal Courts. He represented one Joseph Alberti, a concessionaire at Fun Fair Park who had a claim against Fun Fair Park Inc. Alberti called him one Sunday to meet with other concessionaires who had similar claims and with officers of Fun Fair Park Inc. The latter failed to appear or call, whereupon Alberti stated he would file a bankruptcy petition against Fun Fair. He told Alberti he could not help him except to fill out the petition, because he was not admitted to practice in the Federal Court. They, together with other creditors, went to his brother's office to fill out the petition. When he arrived there he found that some parts in

the petition required information which neither he nor the others could answer. Mr. Kind, one of the concessionaires (creditor) volunteered to call respondent on the phone. Kind called a number and had a conversation and "then put me on". He knew respondent and was familiar with and recognized his voice. He told respondent he needed certain information with respect to paragraphs 3 and 4 of the bankruptcy petition and respondent furnished it to him. Respondent gave him the necessary information to complete the form (Exhibit 25). He told him how much was past due to certain of the petitioning creditors (paragraph 3). With respect to paragraph 4, the allegation reads, "within four months next preceding the filing of this petition, the said alleged bankrupt (Fun Fair Park Inc.) committed an act of bankruptcy in that the alleged bankrupt, to wit, on or about the 13th day of January, 1964,

> "(a) with intent to hinder, delay and defraud its creditors, conceal, remove or permit to be concealed or removed, or set over unto said divers persons whose names are unknown to your petitioners, valuable property consisting of approximately $15,000 [of the value of about $15,000] and did make and suffer a preferential transfer, in said amount, as defined in subd. 1 F sec. 60 of the Bankruptcy Act (s.m. 149-156),"

(Portions underscored represent information furnished by respondent and typed into printed form).

The petition was drawn in the name of the creditors pro se.

The witness testified that upon the completion and verification of the form, he turned it over to Mr. Kind and never saw it again.

Joseph V. Alberti, called as a witness for the petitioner herein, testified as follows:

He signed the petition in bankruptcy (Exhibit 25). After it was completed, he filed it in the office of the Clerk of the District Court for the Eastern District of New York. Prior to the filing of the petition, he had several conversations with respondent, whom he met by arrangement at the Federal Court (Exhibit 27, s.m. 400-401). While respondent waited outside and the witness brought the petition into the Clerk's office, he was told that it would be necessary to pay a fee for the Marshal's service of the papers on the alleged bankrupt. He left the Clerk's office and conferred with the respondent who was waiting outside and the latter told him that the service by the Marshal could be dispensed with upon presentation of a petition and order to permit service by the witness' son. Respondent Klein prepared this petition and order for him (s.m. 165 et seq.) (Exhibit 27, sm. 404-408).

Jacob Kind, called as a witness by petitioner, testified that he was Vice-President of Lijac Amusement Corp., one of the petitioning creditors, and a concessionaire at Fun Fair Park. He attended a conference at Mr. Pasta's office at the time the petition was signed. He phoned Mr. Klein and spoke to him, asked him the date when a receiver had been appointed for Fun Fair Park and to confirm the amount of money due. He called respondent because he was his attorney and friend. He had been representing him in a summary proceeding brought against him by Fun Fair Park Inc. He did not know that respondent also represented Fun Fair Park Inc. until respondent appeared in the Bankruptcy Court with Gilman (one of the principals of Fun Fair Park Inc.).

BEST COPY AVAILABLE

It further appears that after the petition in bankruptcy was filed and served, respondent appeared on behalf of the alleged bankrupt, Fun Fair Park Inc., and interposed an answer, denying the allegations of paragraph Fourth, which contain the very information given by him to the petitioning creditors (Exs. 25, 26).

FINDINGS AS TO CHARGE (g)

The evidence outlined above, which remains uncontradicted, establishes that the respondent committed the acts specified in this charge.

Dated: January 13, 1967.

Respectfully submitted,

WALTER R. HART

J. S. C.

A 273

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND JUDICIAL DEPARTMENT

- x

In the Matter of William Robert Klein,
an attorney.

SOLOMON A. KLEIN,

Petitioner;

WILLIAM ROBERT KLEIN,

Respondent.

- x

SIRS:

PLEASE TAKE NOTICE that a hearing will be held on the issues in this proceeding, pursuant to order of this Court made September 29, 1965 and entered in the office of the Clerk of this Court on October 1, 1965, before Honorable Walter R. Hart, a Justice of the Supreme Court of the State of New York, on the 3rd day of January, 1966 at ten o'clock in the forenoon of that day at Room 538 in the Supreme Court Building, Civic Centre, Borough of Brooklyn, City of New York, in the County of Kings, State of New York.

Dated: Brooklyn, New York
December 21, 1965

Yours, etc.,

SOLOMON A. KLEIN
Petitioner Pro se
Office & P.O. Address
16 Court Street
Borough of Brooklyn
New York City

TO:

DUBLIRER & HAYDEN, ESQS.,
Attorneys for Respondent
52 Broadway
Borough of Manhattan
New York City

WH3
3397

A 274

December 21, 1965

Publiker & Hayden, Esqs.
52 Broadway
New York City, N. Y.

Att: Mr. Hayden

Gentlemen: In the Matter of William Robert Klein

This is to advise you pursuant to the notice of hearing served on you by Coleman A. Klein, petitioner in the above-entitled matter, that a hearing will be held on the issues in this proceeding pursuant to the order of the Appellate Division entered October 1, 1965 before Mr. Justice Walter R. Hart on January 3, 1966, at 10 o'clock in the forenoon, at Room 538 of the Supreme Court Building, Civic Center, Brooklyn, New York.

Yours very truly,

Assistant to Mr. Justice Hart

A 275

DUBLIRER & HAYDON
76 Beaver Street
New York N.Y. 10005
WH-3-0880

HAROLD DUBLIRER
CHARLES HAYDON
MAX SELIT
RONALD A. STRACI

January 6th, 1966

Mr. Justice Walter R. Hart
Justices' Chambers
Civic Center
Brooklyn, New York

Re: Matter of William Robert Klein

Dear Sir:

Enclosed you will find a copy of a stipulation of substitution in the above matter.

The original has been filed with the Clerk of the Appellate Division, Second Judicial Department, and a copy has been mailed to Solomon A. Klein, the petitioner.

Very sincerely yours,

Charles Haydon

CH:pg
Enc.

BEST COPY AVAILABLE

A 276

16 Court Street

January 7, 1966

Mr. William Robert Klein
c/o Mr. Sidney Lewis
132 West 43rd Street
New York, New York

Dear Sir: Re: Matter of William Robert Klein, an attorney.

Pursuant to the direction of Hon. Walter R. Hart, we are advising you that the above-entitled disciplinary proceeding has been marked peremptorily for hearing on January 17, 1966 at 10:00 A.M. at Room 538, Supreme Court Building, Civic Centre, in the Borough of Brooklyn, County of Kings, City and State of New York.

Very truly yours,

Kenneth L. Lawlor

KLL:jc

By Certified and
Ordinary Mail

A 277

DUBLIRER & HAYDON
76 Beaver Street
NEW YORK 5 N.Y.
WH 3-0880

HAROLD DUBLIRER
CHARLES HAYDON
MAX SELIT
RONALD A. STRACI

January 10, 1965

Kenneth L. Lawlor, Esq.
Judicial Inquiry
Supreme Court, Kings County
16 Court Street
Brooklyn 1, New York

Re: Matter of William Robert Klein,
an attorney

Dear Mr. Lawlor:

This will acknowledge receipt of your letter of January 7, 1966.

We had previously advised you by mail that we no longer represented Mr. William Robert Klein. You were served with a stipulation of substitution in which Mr. Klein's address was set forth.

We expect that any communications between you and Mr. Klein will be addressed to Mr. Klein at the address therein set forth.

Very sincerely yours,

Charles Haydon

CH:sew

cc: Mr. Justice Walter R. Hart

A 278

WILLIAM R.KLEIN
c.o.Sidney Lewis,
132 West 43rd St.,
New York City

Wisc.7-2840

January 11,1966

Hon.Walter R.Hart,
Justice Supreme Court
Borough Hall,Brooklyn.

Re:Reference W.Klein,Atty.
Adj.Hrg. Jan.17,1966

Honorable Sir:

I am informed that my adversary appeared ex parte and urged at Court, that the adjourned hearing ,the opening one,be set down peremptorily for the above date, no such ruling having been part of the grant of adjournment,given January 3,1966 by Your Honor to my then attorney,in instant recognition of the subway strike difficulties being shared by all,as I understand.

I am constrained to ask, kindly and respectfully, for a recall of such ruling, and in the light of the continuing transit emergency.

The history of this matter is already replete with grounds for objection,furnished by the conduct of adversary; but it was hardly to beexpected that he would so soon in this new forum show such hand. It is apparent that the "peremptory" move is continuation of an early pattern of winning ,not on merits, but by a series of well-laid defaults. Of course,all objections are reserved.

Request for adjournment is also based upon the fact that on affidavits verified the 6th of January,1966, I obtained an Orderto Show Cause,January 10,to be served by the 11th,for return on Motion Day at Appellate Division, the 14th at 9:30 AM. When the papers today were ready for service, I called my adversary's office,mentioned the difficulty of getting from New York to Brooklyn, that I might not reach there in time,asking for his acceptance of the papers by mailing forthwith. His office answer was an immediate No,even as my attorney had received a similar rejection, during the Christmas holidays.I believe that a lack of courtesy is no substitute for merits. That order to show cause seeks stay of hearings pending appeals to Court of Appeals, already duly taken,and other basic relief, as well as in reargument of application for transfer of the proceeding to the First Department , only qualifiedly denied.

Failing cooperation of my adversary,I called the Clerk of the Court who had handled the issuance of the Order, and he stated that,if transit difficulties prevented timely service, he would have the papers amended by extension of time for service,when I got to Brooklyn.

I remain Sir,

Respectfully
William R.Klein

k.t

Cc. to Adversary

C 321—Affidavit of Service by Mail on Attorney.

A 279.

JULIUS BLUM, INC. LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND JUDICIAL DEPARTMENT

In the Matter of William Robert Klein, an attorney.

SOLOMON A. KLEIN,
Petitioner,
WILLIAM ROBERT KLEIN,
Respondent.

Index No.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF KINGS ss.:

BARBARA MILLER being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 902 41st Street, Brooklyn, New York, 11219.

That on the 11th day of July, 19 66 deponent served the annexed on WILLIAM ROBERT KLEIN Respondent in this action, at c/o United Associates, Inc., 132 W. 43rd Street, New York City the address designated by said respondent for that purpose by depositing same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this 11th day of July, 19 66

KENNETH L. TAYLOR
Notary Public, State of New York
No. 30-0327575
Qualified in Nassau County
Term Expires March 30, 19 67

Barbara Miller
Print name beneath signature

BARBARA MILLER

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND JUDICIAL DEPARTMENT

- x

In the Matter of William Robert Klein, an attorney.

SOLOMON A. KLEIN,

Petitioner,

WILLIAM ROBERT KLEIN,

Respondent.

- x

SIR:

PLEASE TAKE NOTICE that a hearing will be held on the issues in this proceeding pursuant to order of this Court, before Honorable Walter R. Hart, a Justice of the Supreme Court, on the 20th day of July, 1966 at 10:00 o'clock in the forenoon of that day at the chambers of Mr. Justice Hart, 11th floor, Kings County Courthouse, Civic Centre, Borough of Brooklyn, County of Kings, City and State of New York.

Dated: Brooklyn, New York
July 11, 1966.

Yours, etc.,

SOLOMON A. KLEIN
Petitioner Pro Se
Office & P.O. Address
16 Court Street
Brooklyn 1, New York

TO:

MR. WILLIAM ROBERT KLEIN
Respondent Pro Se
c/o United Associates, Inc.
132 West 43rd Street
New York City, New York

A 281

WILLIAM ROBERT KLEIN
132 West 43rd Street
Seventh Floor, N.Y.C.

October 11,1966

Dear Mr. Erde,

Mutual courtesy, and in appreciation of your reminder note of October 7, 1965, requires that I at least inform you that, because of recent[illegible] delays, the submission and notice of the U.S. Supreme Court thereupon remains in status, awaiting also the answering pp ers of respondent Solomon A.Klein Esq. in the certiorari matter, so that you may guide yourself accordingly.

With sincere appreciation, I am

Yours very truly,

William R. Klein

k.t.

Hon. J.Erde,
Secy. to Justice Hart,
Brooklyn, 1, N.Y.

BEST COPY AVAILABLE

A 282

COPY

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

October 5, 1966

Mr. William Robert Klein
132 West 43rd Street
Manhattan, New York

RE: WM. ROBERT KLEIN v. SOLOMON A. KLEIN
October Term, 1966

Dear Sir:

The application for reconsideration and request for oral argument of the previous application for stay in the above-entitled case, was presented to Mr. Justice Harlan, who has returned that application with the following endorsement:

"I find no basis for interfering with my previous disposition.
Denied.
J.M.H.
10/4/66"

Very truly yours,

JOHN F. DAVIS, Clerk

E. C. Schado
Assistant

ECS:m't
CC: Kenneth L. Taylor, Esquire
Assistant Counsel
Judicial Inquiry
Supreme Court, Kings County
16 Court St.
Brooklyn 1, New York

A 283

October 7, 1966

Mr. William Robert Klein
c/o United Associates, Inc.
132 West 43rd Street
New York, N.Y.

Re: Petition of Solomon A. Klein,
Petitioner v. William Robert
Klein, Respondent

Dear Sir:

This is to advise you that at the time of the last hearing the above entitled matter was adjourned to October 17, 1966 at 2:00 P.M.

Very truly yours,

A 284

October 14, 1966

Mr. William Robert Klein
c/o United Associates, Incorporated
132 West 43 Street - 7th floor
New York, N. Y.

Re: Petition of Solomon A. Klein, Petitioner,
v. William Robert Klein, Respondent.

Dear Sir:

This is to acknowledge yours of October 11, 1966. I tried to reach you on the phone but could find no phone number for you or United Associates ~~Incorporated~~ at the above address.

This is to advise you that unless the hearing has been stayed, the hearing in the above entitled matter will proceed as scheduled on Monday, October 17, 1966, at 2 P.M.

Very truly yours,

WALTER R. HART

By _____
Law Assistant

WILLIAM ROBERT KLEIN
132 West 43rd Street
7th Floor, N.Y.C.

October 18,1966

Hon.Walter R.Hart,
Justice Supreme Court
Kings County Courthouse
Brooklyn, N.Y.

Re: Re Attorney
SAK v. WRK

Honored Sir:

It is desired that the following be added to respondent's statement of record, in disqualification,prior to withdrawal if Your Honor please: (and in reconsideration of application for adjournment,having reserved all objections)(the prosecution having asked the writer to reconsider appearing before you):

Twice at the October 17,1966 hearing,Your Honor contradicted my recall of the record of July 20,1966 meeting,and once I also was vilified ,per usual prosecution pattern,for another recall of the facts of record on appeal. Upon return to those records, respondent's versions appear correct:

(a) The prosecution itself was undertaken as a local King's "command " performance of Judge Benjamin, now a member of your parent Bench.(p.40614,40623 J.I.P.C.,s.m.),having thereby wrenched the matter from the already jurisdiction of the First Department. (For this,Mr. Lawlor vilified)

(b) Your Honor differed ,and then left the issue of fact to the record of July 20,-that Your Honor had fully agreed then,that in face of final,permanent disbarment judgment,on file,standing now twice affirmed by your Court, actual adversary in pending litigation to this respondent, and affirmed as "warranted" on appeal by the Court of Appeals,that your Honor had no judicial function and could serve none as referee to report,and could not by any report affect adversely that judgment,or even make a recommendation.

Attention is called to p.13 s.m., July 20 hearing),wherein the stenographer ,incidentally,throughout seems to have fallen heir to the same mistake, which seemed to have taken hold alike of the Prosecutor, present and Your Honor also as disclosed on October 17, when all present seemed surprised except the writer,that your function was not as a Supreme Court Justice ("The Court", as minutes read) but as referee and confined"to report",until the Order of designation was produced by your Secretary at your demand:

> "The Court. I agree with you totally..... (p.13)
> " All I am to do is to hear arguments and take testimony,and not even determine but report....(P.14)
> Now as far as the order of disbarment

"being final and irrevocable in the sense of the word that you have suggested, you are correct. I have no power to vacate or even recommend that it be vacated..... (p.14,15)

(c) In application for adjournment, after setting out in detail, evidence of the continuing pattern of the prosecution in manipulating the record for certiorari, and delaying its transmission, trifling with the courts, and toying with this respondent in the process, but feeling secure nonetheless in the support of his employer Court, so that certiorari application was still incomplete,-all of which was received by Your Honor without comment or rebuke of the prosecution,- on the opening of the adjourned hearing, the respondent emphasized that the referee had fairly made the status of certiorari the determinant of future adjournment; for Your Honor, expressing a most concerned regard for respondent's remaining rights, on July 20, thus expressed himself:

"in view of the fact that he stands disbarred that he should have the option of determining just when the hearings should start. He tells me that he is going to the U.S.Supreme Court in this matter. There will be no hurry in fixing a date.(p.3)

We will set a date that will not interfere with any of those steps that you want to take.(p.3).."You fix the date."(p.34)(see p.37.

However, with the arrival of October 17, a newly conceived drive to press on the hearings confronted the respondent, with the prosecution silent, first by letter of Your Honor's Secretary, and then on the hearing from Your Honor; thus compelling respondent to take a step inconsistent with his legal position before the U.S.Supreme Court, by participation or not at respondent's peril, even as Your Honor warned respondent before departure. That "inconsistent" danger came up on July 20 at p.37, in no mistakable terms; and the hypocrisy of the prosecution stood nailed by Your Honor at p.39, in professing haste, when your Honor showed that the records were still in the Court of Appeals; and now they are in Washington, however belatedly sent to mar respondent's jurisdiction (90-day limit for certiorari), by a Court in obvious collaboration with this Prosecutor.

Your Honor repeatedly professed a fearlessness of the parent Court and of any man, fearing only God. Your Honor rejected the concept of both the Prosecutor and you being "servants" of the parent Court, by designation, of its Orders, and de-emphasized your statutory dependence upon that Court for renewed appointment as Judge, soon coming up; and added that, as I recall,

you were hastening the hearings now, so that they would be complete before the time for renewal would arrive, and that you had so declared at the July 20 hearing as your intention then.

There is no reference to that subject except at page 32-3, at all, and then only as to Your Honor's having "4 years more to go" " with the help of God"; and with a showing of deep concern for respondent in his plight, explaining your call solely for a hearing in respondent's interest.

At the hearing, the Prosecution feigned surprise that the Order of Reference designated you as "referee to report" and not to sit as "Supreme Court Justice", thus downgrading your judicial function for this anomalous matter. What struck me however, that while the prosecution, per normal pattern, for this case, of silence before propoundments by respondent of constitution, law or fact, rarely offering any content worthy the name, was, that Your Honor, reading the Order and then studying the Art.6, Section 20 provision of the N.Y. State Constitution, and the corresponding statute, simply and unequivocally barring the Judges from acting as referees in any matter, in the Court, and getting no support from Mr. Lawlor whatever, brushed both aside as "not applicable " to you; without more, and Mr. Lawlor was in glee!

Throughout the July 20 record, you invite submissions of law by the respondent (e.g. p.37) I do this now, in asking you to reconsider that brusque treatment of your Honor's Constitutional obligations; and I trust I shall be personally forgiven for taking this liberty: (The condemnation in no uncertain terms, of Judge Baker's sitting as referee, investigator and merely to receive evidence and report, by the dissenting Mr. Justice Black in the U.S. Supreme Court, (in Re Anon. v. Baker, Cohen v. Hurley) at a time when no one raised the constitutional bar, and earlier by the N.Y Court of Appeals (Re Connolly v. Scudder) in forbidding Supreme Court Justices to be designated as investigators or reporters to others, and acting as less than full Justices, with power to hear and determine, has been known to the Prosecution, without any challenge from that source.)

49 NY 280

Countryman v. Norton, 21 Hun, 17, citing Settle v. Van Ecrea/in solid support, leaves no room for interpretation, exception, departure from the Constitutional bar against Supreme Court Justices accepting constitutionally "incompatible" offices and functions, compelling the vacature of the office of Judge by operation of law, upon acceptance of the office of referee, ipso facto. Smith v. Dillon, 267 AD 43)

> "There is a direct and express prohibition in the fundamental law, prohibiting either of the officers named from acting as referees while he holds such office."

Neither stipulation of the parties consenting thereto, nor any report emanating from such referee, have any validity. The report is "void", holds the Countryman case. In the Smith case, is this rule:

of the common law

> "It is well settled rule/that a public officer cannot hold two incompatible offices at the same time. The rule is founded upon the plainest principles of public policy. It is imbedded in the common law, and has obtained from early times. At common

"law, and UNDER CONSTITUTIONAL AND STATUTORY PROHIBITIONS against the holding of incompatible offices, a person who accepts and qualifies for a second and incompatible office, is generally held to vacate, thand by implication, resign the first office, so that no judicial proceedings are necessary to determine the title. The successor may at once be elected or appointed. 42 Am.Jur. Public Officers Sec. 59,73)

(Any report, favourable, could be repudiated by Prosecution later).

If your Honor should go forward with hearings, in absence of respondent, thus barred from an opportunity, pending his proceeding in certiorari (in which adversary has not yet served his Answering papers, having till about October 28 by his own delays) ~~to participate~~ except at cost of inconsistent conduct and peril of waiver of position before the Courts, then, it is submitted that at such exparte hearings, the cases hold, it were incumbent on Your Honor to deal with the matter as on demurrer; all questions of sufficiency, of the proceedings, and the charges, and their underlying proofs, as alleged in the first instance in the Petition--and all that is set out in the Petition, as the necessary legal basis. And when it is found that, contrary to the allegations of the opening paragraphs of the Petition, that the validating prerequisite for the existence of any charges stemming from the secret Judicial Inquiry- to wit, a prior screening report, essential for the protection of attorneys in the absence of confrontation with accusers, etc., - never existed or was filed as alleged, the entire base of the disciplinary proceeding is gone.

All this is set out in the Appellant's Brief, uncontested by the Prosecution, and never treated by the Court of Appeals, --both Briefs being now before Your Honor as part of the record.

Your Honor has stated that he would withhold any findings pending certiorari, in any event. The pattern of the Prosecution has been to tie respondent's hands while forcing him on, from the outset. This performance in the withholding of records to delay certiorari, only to find Your Honor forcing the hearings on, comes with a measure of added shock. Your Honor at one point charged respondent with aiming to use up the afternoon to avoid hearing of the case. The respondent is in position of having been professionally executed, with grant of hearings from his deathbed. Your Honor also, first declaring that he would not allow the issue of attacks on the judges to enter his hearings, did in fact allude to respondent's having propensity for general attack on the judges, though that aspect has been declared out by the Court of Appeals. Thus Your Honor was asked, that he apply for vacature of the judgment, if he were to hold hearings, so as to enable respondent to appear free of all cloud, before him, and to thus avoid the need of feeling bound by the judgment of guilt already found, being greatly concerned for the respondent's plight. Even reputed Russian justice, though reversing the burden of proof of a defendant, does not first convict and then "hear" him.

I implore Your Honor, to await the completion of certiorari, and not to go forward with ex parte hearings, which in secret, would be but a resumption of the star-chamber secret hearings of the Judicial Inquiry, & so as to give respondent an uncoerced opportunity to decide on participation without risking his legal position before the Courts.

I am,

Respectfully

Copy to adversary

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

A- 289

December 5, 1966

RE: KLEIN v. KLEIN,
No. 665, Oct. Term, 1966

Dear Sir:

The Court today denied the petition for writ of certiorari in the above-entitled case.

Very truly yours,

JOHN F. DAVIS, Clerk
By

E. J. Gallen
Assistant

Solomon A. Klein, Esq.
Chief Counsel
Judicial Inquiry
Supreme Court, Kings County
16 Court St.
Brooklyn, N. Y. 11201

COPY

A 290

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

September 2, 1966

Mr. William Robert Klein
132 West 43rd Street
Manhattan, New York

RE: WM. ROBERT KLEIN v. SOLOMON A. KLEIN
October Term, 1966

Dear Sir:

The application for stay, together with request for oral argument and the affidavit in opposition and in reply thereto, have been presented to Mr. Justice Harlan, who has returned the papers with the following endorsement:

"Denied. See attached memorandum
J.M.H. 9/2/66"

The memorandum of Mr. Justice Harlan is as follows:

"Without reaching the issue of "finality", 28 U.S.C. § 1257, I deny this application in all respects. The papers before me fail to reveal the existence of any substantial federal question."

Very truly yours,

JOHN F. DAVIS, Clerk

E. Edward C. Schade

E. C. Schade
Assistant

ECS:mk
CC: Kenneth L. Lenlock, Esquire

A 291

APPELLATE DIVISION :SUPREME COURT
SECOND JUDICIAL DEPARTMENT

In the Matter
of
The Establishment of a Judicial Inquiry
on Professional Conduct, with Respect to
Attorneys and Counsellors at Law in or
Having their Offices in or Practicing
Law in Kings County

In the Matter of William Robert Klein,
an Attorney

Solomon A.Klein,
Petitioner
William Robert Klein,
Respondent

New Index No.
2734

d. 1-10-66

UPOn the annexed affidavit of WILLIAM R.KLEIN, sworn to the 6th day of January, 1966, the Establishing Order of this Court dated December 19, 1962, above entitled, and the further Order of this Court made thereunder dated October 9, 1963 (as amended October 30, 1963), referring charges of "alleged misconduct" etc. "on part of members of the Judiciary" etc.", to the Judicial Inquiry on Professional Conduct", and the Order and Decision of this Court, dated December 13, 1965, in the lower entitled Matter, and the affidavits used thereon, Petitioner's Notice of Hearing dated December 21, 1965, and all the papers and proceedings had herein,

LET the Petitioner Solomon A.Klein, show cause herein on the 14th day of January, 1966, at 9:30 A.M. at the Courthouse herein at 45 Monroe Place, Brooklyn, N.Y.

(a) WHY this Court's 8-member Body, in administration, should not have and set down for full hearing, a presentation of the misdirected and illegal use of its Order of October 9, 1963, and the events subsequent to its issuance to date;

(aa) WHY thereupon the Court should not invalidate and expunge the transcript record of proceedings had ostensibly pursuant thereto and all the proceedings stemming therefrom;

(b) WHY on reargument of respondent's motion, the transfer of the within disciplinary proceeding to the 1st Department, where it may be consolidated with a prior pending one of same underlying subject matter, be not granted;

(c) WHY stay of enforcement of the within order of disbarment be not had, pending hearings on the issues herein and pending determination of appeal to Court of Appeals, from the said order of disbarment; and

what bearing on this?

(d) WHY hearing now scheduled for adjourned date of January 17, 1966, on the issues herein of the disciplinary proceeding be not stayed, pending said appeal.

BEST COPY AVAILABLE

AND IN THE MEANTIME, Let the hearing scheduled to take plac before the Referee named herein, Hon. Walter R. Hart, on January 3, 1966 be stayed and deemed stayed, pending the determination hereof, and

LET service of a copy hereof, and of the affidavit annexed be deemed good and sufficient, if made on the office of the Petitioner herein, on or before the 11th day of January, 1966.

Dated: Brooklyn, N.Y. January 10, 1966.

Hon. Walter R. Hart
Presiding Justice, Appellate Division
Supreme Court

BEST COPY AVAILABLE

SUPREME COURT :APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

In The Matter of

WILLIAM ROBERT KLEIN

An Attorney

Solomon A. Klein
Petitioner

WILLIAM Robert Klein
Respondent

State and County of New York::ss::

William R. Klein, being duly sworn, deposes and says:

I am the above-named respondent.

I make this affidavit in support of the annexed Order to show cause for reliefs as recited therein.

I am firstly asking that the within application be heard and presented before the full eight members of this Court, in Administrative Body.

I am asking also for reargument of our motion for transfer of the within proceeding to the jurisdiction of the First Department, and for stay relief--to stay enforcement and operation of the Order of disbarment, and for stay of hearings , pending determination herein, and of appeals, to the Court of Appeals, from two prior orders of this Court, -one for disbarment, and the other denying vacatur thereof, both based in claim of constitutional violation.

This Court's latest decision, dated December 13, 1965, in qualified denial of request for transfer, was made by only a four-member Bench, including the Presiding Justice, Hon. George J. Beldock, and again excluding Benjamin J. It reads as follows:

"NOT TO BE PUBLISHED.

No. 2734 In the Matter of William Robert Klein, an Attorney. Solomon A. Klein, Petitioner, William Robert Klein, Respondent.

Motion by respondent to transfer proceeding

to the Appellate Division, First Department denied without prejudice to renewal after the hearing and report directed by this Court dated September 29,1965.

Beldock, P.J.,Brennan,Hill,Hopkins JJ. concur.

December 13,1965. In re Klein,Wm.Robert, an Attorney. No.2734 "

This decision was first made known to us ,by mail,received by my attorney on morning of December 22,1965,together with a copy of the Order made thereon, of same date. Simultaneously,we received the Notice of Hearing "on the issues of this proceeding" dated December 21,1965,both from Petitioner and the Referee's office. The hearing date set is immediately after the Christmas-New Year holidays,to wit, January 3,1966,at 10 A.M..My attorneys were not previously consulted by Petitioner as to said date(adjourned now to January 17,1966).

Our application for transfer is essentially one,which sets out, under oath, an undisputed set of facts,pointing to hostility of this Court, having a three-year history;and during which,this Court became my actual adversary in two proceedings. One was to review its acts and omission in carrying out a statute-prescribed duty,of supervision of Judge's conduct in the Court below,before the Administrative Board of the Judici al Conference,and the other, in a mandamus-and-prohibition Article 78 proceeding,covering the same area,amongst other things.

That hostility has gone to such evidenced extremes, as to have produced a final Order of Disbarment , summary in nature. I describe it as summary , because the Opinion and Order of Disbarment recite a"finding"of"guilt" on one alleged "charge", being of principal and leading nature,and by a "Supreme Court Justice"; which "charge" never existed herein,and of which no notice thereof was ever given herein;because, further,the Opinion and Order recite charges, contained in Petition,and finding of guilt thereon,by this Court, as to which there was never any hearing, reference or trial, no normal opportunity,as law provides for submission of motion to dismiss these charges(makeweight in nature, as the record relied

on by Petitioner therefor shows) and no normal opportunity to serve an Answer, upon failure of motion to dismiss; and it may be added, that three of the charges are described in the Petition of this Petitioner, as crimes under our Penal Law. This Court, further, on no evidence before it, made its finding of lack of character and fitness required of a member of the Bar, in this respondent Attorney. And all this was done, notwithstanding that the Petitioner, as to the recent motion, offers no dispute of the facts, in his five-page answering affidavit, which we, in detail, aver in our moving affidavits.

Since 1735, to our knowledge, there has never been a summary disbarment, such as this. In that year, two attorneys of the colonial New York Bar, James Alexander and William Smith, on trial defending one John Peter Zenger, Editor of the New York Weekly Journal, charged with seditious libel, for having criticised the acts and actions of the Royal Governor, William Cosby, refused to comply with the rule of the Chief Judge, James Delancey, to withdraw "exceptions to the Commissions of the Justices there" in the Supreme Court; and thereupon, without more, were "disbarred from Supreme Court cases," by that displeased Judge.

These two attorneys thereupon moved to recover their noble privilege of practise, filing the following Complaint, whose introduction read as follows:

> "The Complaint of James Alexander and William Smith to the Committee of the General Assembly of the Colony of New York, Etc.
>
> "Mr. Chairman;
>
> It is with the utmost regret that we attend this Committee in the quality of Complainants; but the matter of it too nearly affects us and the Liberties of this Country, to be buried in silence. Had our personal interests been solely concerned, we might have rested in a patient expectation of a personal remedy in some other way. But when the liberties of a Country are at stake, and the Civil Enjoyment of a People sapped at the very foundation of them, it behoves every man that loves his Country to cry out and give Public Warning of the Danger. This duty, incumbent us all, engages us in particular, to inform you, that in the Term of April last, in the case of John Peter Zenger then depending in the Supreme Court, filed Exceptions to the Commissions of the Justices, there; the Tenor whereof follows: "

With the thus enforced withdrawal of Zenger's attorneys, and a cause that induced fear in the local Bar, there presented himself for that duty, one Andrew Hamilton, Esq., from Philadelphia, Speaker of the Pennsylvania Assembly, who tried the case and won acquittal for his client from a Jury of 12, making in part the following plea on his client's behalf:

> "The question before the Court, and you, Gentlemen of the Jury, is not of small or private concern, it is not the cause of a poor printer, nor of New York alone, which you are now trying. No, it may in its consequences affect every freeman, that lives under a British government in the main of America. It is the best cause. It is the cause of liberty and I make no doubt but your upright conduct this day will not only entitle you to the love and esteem of your fellow-citizens; but every man who prefers freedom to a life of slavery will bless and honor you, as men who have baffled the attempt of tyranny; and by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity and our neighbors, that which nature and the laws of our country have given us a right--the liberty-- both of exposing and opposing arbitrary power (in these parts of the world at least) by speaking and writing truth."

It was this "short-shrift" disbarment of 1735 of these two attorneys, to which Mr. Justice Black of the United States Supreme Court, while in process of denouncing star-chamber inquisition proceedings, with or without alleged safeguards, against abuses to which such proceedings are prone, made pointed reference. (See minority opinion, Cohen v/Hurley, 366 U.S. 117, 139, 6 L.Ed. 156, 171; Anon 6&7, v. Baker, 360 US 287, 3 L.Ed. 1234)
But even so, the majority opinion, dealing with the predecessor Inquiry here, taking from our own Court of Appeals, (Cardozo, Ch.J.), implied agreement with Mr. Justice Black, where the safeguards for an attorney's protection, were absent. And in the proceedings of the Judicial Inquiry on Professional Conduct, whose chief Counsel was this Petitioner, we have already referred to key abuses, which were allowed to operate; without which, no charges, no disbarment, no proceedings involving me as a respondent, would have stemmed therefrom.

Everything here, therefore, stems from an Order of this Court's Administrative Body of Eight, dated October 9, 1963, setting up an "Inquiry", predestined by its abortive terms, to produce a legal series of deformities. That Order, requiring Judge Baker to report on Judge Benjamin's alleged misconduct, was a nullity ab initio. He at once so ruled. The basic Order of December 19, 1962, forbade such authority.

However, that Order of October 9, 1963, stemming from the earlier Establishing Order of December ,9,1962, subordinately refers to Supreme Court Justice Hon. Edward G. Baker, the non-judicial task of "receiving, investigating and reporting" (1962) and "taking testimony and report" on certain charges; and again, this Court, by its Order of September 29, 1965, in the within disciplinary proceeding, directs Supreme Court Justice, Hon. Walter R. Hart, to "take testimony and report", in each case to the parent Court.

Research reveals that the goodly number of test cases, concerned with such "judicial inquiries" as directed by the 1962 and 1963 Orders, and which went beyond respective Ist and 2nd Department Appellate Divisions, affecting attorneys' conduct at the Bar, to the Court of Appeals of this State, and to the United States Supreme Court, did not reach the question of the Court's power or authority to designate one of its owm Justices as a referee. Those tests were directed to the power of such designated Judge-referee to compel testimony , and with or without benefit of presence of counsel to the witness . We have already cited those cases, Cohen v. Hurley, Anonymous 6 & 7 vs. Justice Edward G. Baker, 6 L.Ed.(2) ; and 3 L.Ed.(2) et al. The New York State Constitution Art. 6, former Section 19, now 20, barred and bars a Supreme Court Justice from acting as a Referee, and bars him (amomgst other Judges) from "holding any other public office or trust"; and [illegible] 4312 of CPLR, taking from Section 80 C.P.A. and Rule 172 R.C.P. contains the specific bar, in repetition. (See footnotes at p.154, Gilbert-Bliss Annotated, Vol.2, CPA at Sec.80 and Vol.10 b, at p.101, RCP. Other associated Sections show that a Justice is excluded from designation of referee. Undouhtedly, this was in Justice of Supreme Court, Hon. Hugo Black's mind generally, when he categorically declared in Anon. v. Baker, 3 L.Ed.(2) 1234 at p.1241, 360 US 287, 299,

> "The naked, stark issue here is whether a judge, who must actually try cases in public..... can consistently with due process compel persons to testify....."

Thus, the Constitution bars the use or downgrading of the lofty office of a Judge of contest, to any other purpose ; and thus, we submit, the same applies to the designation of Justice Hon.

Walter R.Hart presently.

Thus the very base of these disciplinary proceedings,and the "Report " or Reports" of Judge Baker,and which themselves are the avowed and sole basis for the existence of the present "charges" against this respondent, must be deemed to fall,and the charges alike therewith, it would appear.

Rule 4313 of CPLR requires a designated Referee to serve Notice of hearing "within 20 days after the date of the Order"of Reference , which herein provided first for service of Respondent's Answer.That Answer,"reserving all objevtions" was served on October 11,1965; and some 71 days were allowed to elapse, when suddenly on eve of Christmas, a Notice of first hearing arrived on the 22nd of December,dated the 21st,and fixing the end of the Christmas-New Year's holiday for such commencement, January 3,1966.(This Petitioner had followed exactly same pattern, when on the eve of Christmas, he had served upon me,altogether without any prior notice, the Order to Show cause containing the "charges",then also to be answered right after New YearsDay.Actually, the Inquiry had been silent for some 10 months,with no action talen by Report or otherwise to this deponent's knowledge;and no adjournment to obtain counsel was tolerated by Petitioner. A two-days' adjournment was granted by the Court.)

It may well be that Petitioner, aware of the possible legal and constitutional defects attaching to these proceedings of reference,had already abandoned the Order of September 29,1965 and to await the outcome of pending appeals,duly served upon his office from that Order ,as well as the prior Order of disbarment of June 29,1965.

All this is apart from the issues of the misuse and misapplication of the Order of October 9,1963, hereinafter to be treated,and itsotherwise inherent defects, of fundamental nature, hereinafter also to be treated.

(a) OUR APPLICATION FOR FULL EIGHT-MEMBER ADMINISTRATIVE-BODY PRESENTATION

I cannot believe that the entire membership of this Court, which by statute(Art.7a Judiciary Law,Sec.214) is vested with the responsibility in issue here,for compliance with the terms of a certain Letter of Reference dated March 4,1963,emanating from the Judicial Conference of the State of New York,could have been aware of the contents and specific terms of an Order it issued,ostensibly by its 8-members , in such purported compliance; nor can I believe th the entire membership of the administrative Body ever became aware of the exact manner in which that Order was misdirected and misapplie to an entirely foreign and opposite purpose. That order is the aforementioned Order ,dated October 9,1963, amended October 30,1963, in which this respondent,first, and then his clients,were authenticated as complainants,ostensibly in pursuance of said terms of Referen contained in said Letter,(annexed hereto as Exhibit A).

The rareness of this application , to have this matter orally heard,-upon the entire record on file herein, and in custody of the Judicial Inquiry on Professional Conduct;corresponds to the unusual,and perhaps unprecedented,course taken,in and by those total proceedings, that can never have seen the light of day, I believe.

It must be remembered that that Order of October 9,1963 constituted,in fact,a complete self-reversal of an earlier announced decision,in rejection and refusal of the very Investigation ,in words provided for by the Order; that decision ,ostensibly of the 8-man Body,was contained in the Presiding Justice's letter to me of September 25,1963, immediately followed by a Letter from the Governor of th State,-with some concurrent jurisdiction, already duly invoked, - dated September 27,1963. These letters, exhibited for the first time herein,are annexed, marked Exhibits B and C. A third letter,to the Governor,pointing up the flagrant discrepancies(of B and C) dated October 3,1963 by my clients,could have only spurred the Governor's office into a further action, after having already been satisfied;and the Order aforesaid followed;and as matter of fact,the judicial side of the

Court on own motion, offered, by further letter, to entertain motion, t set aside a dismissal of our appeal,-so favorable to our adversaries, dated October 14,1963. Reference to these events appears in our moving papers at pp.3-4, Pars. 10-11 thereof.

The present decision bears only four Justices' names, including the Presiding Justice, Hon.George J.Boldock, and again excluding Hon.A.David Benjamin,Justice, around whose judicial person, all the events herein, and issues, revolve.

The issues of the present disciplinary proceeding are, at every phase, interlaced with those embraced within the subject of the State Administrator's Letter of Reference, and inseparable therefrom.

The matter of that Reference to this Administrative Body is, still, pending in litigated form, with this Body as adversaries of deponent in fact, and also of my co-petitioning clients, the Ursini A review, under Section 235 of the Judiciary Law, in mandamus- and prohibition, with this Court as respondent party,-by its named Director of Administration, as in that statute required, is pending undetermined before Special Term, Supreme Court, New York County (Index No.8671-1965) ; and a review by the Administrative Board of the Judicial Conference, wherein clients and deponent ask the Administrative Board to act on alleged omission of duty in supervision of judicial Conduct, upon duly filed Complaint, under Sections 212, 3, 4 of the Judiciary Law, is also similarly pending; and as we have previously averred, three members of the Administrative Board , the respective Presiding Justices of the other three Appellate Divisions of this State, have duly deposited their opinions as to the course to be pursued, where there is an omission of supervisory function by any Department, as prescribed by Section 214.

Thus, this Body, may, on convening, and having a presentation of these matters, make total and corrective disposition of the joint issues; and, it is suggested, can thereby effectually dispose of all pending matters at one comprehensive consideration, and clear them out of this Court. That is not to say, that actual charges , if

ay against me exist, may not be duly treated in a proper forum; and it is my insistent desire that all charges against me, be duly determined. But nothing has ever been done by this Body as to the subject in the Letter of Reference to date.

Accordingly, on this application, we are submitting eight copies for the Court as a whole, seven additional copies of the original motion, and further respectfully refer the Body's members to previous answering and reply papers on file herein, and also to our motion papers for vacature of the disbarment order etc., and also to the comprehensive papers, on our motion in the First Department, where we asked the Appellate Division to restore our name to its rolls, stricken pursuant to routine observance of this Court's order to strike; it being a constitutional nullity, by which no other Court was bound. The Court here is in constructive possession thereof through its Petitioner here, who was duly served with a copy.

In our Sixth Affirmative Defense, contained in our Answer, which this Court, in self-reversal partial, granted leave to serve, we pointed out that no judicial function is further being served by continuation of this proceeding, a final order already being entered

I submit that this is the time for seasonable correction in all respects. I stand to day disbarred; which, in order of sequence, with hearing later to come on the issues, reminds of Lewis Carroll's "Alice in Wonderland," wherein the character is punished first and then tried later for the offense charged. The Petitioner herein has used the power of his office to produce a professional decapitation here, by-passing all due process of law. This happened in America, 1965 and this Court's Departmental Director in Special Term, New York County shricked out his prediction, that it would happen by this judicial Body, even before the petitioner's motion was as yet submitted to the Court, and expressed open "Hope" for immediate "disbarment". Incredible but true This Petitioner, in Vol. 9, Bender's Forms Consolidated Laws of N.Y. in a preface discusses constitutional guaranties, citing 3 Court of Appeals cases, to emphasize "THE INHERENT RIGHT AND DUTY OF THE COURT TO PROTECT THE CITIZEN IN HIS CONSTITUTIONAL PREROGATIVES AND TO PREVENT OPPRESSION AND PERSECUTION"

(aa) OUR APPLICATION TO HAVE INVALIDATED AND EXPUNGED THE JUDICIAL-INQUIRY TRANSCRIPT OF HEARINGS HELD IN THE "FUN FAIR PARK INC." MATTERS.

A record of 1200 pages of stenographer's transcript was made, ostensibly pursuant to the Order of this Court, by its eight Justices, sitting in Administration, all arising in and out of the Fun Fair Park cases. The Order referred the subject-matters of the Letter of Reference of the Judicial Conference as aforesaid, to wit, the set of charges, together with demand of the Ursinis and their attorney for Investigation, to this Inquiry, as set forth in the said Order (and as amended by further Order dated October 30, 1963).

The entire product of that Inquiry, subject to the immediate and repeated rulings of presiding Judge Baker, which were binding then on this Petitioner as his "aide" (Order December 19, 1962) was illegitimate, for it failed to have jurisdiction to go into that area, and never made any findings, nor received any evidence, dealing therein or therewith. (Nor could it have produced legitimately any charges against this respondent, because Judge Baker ruled, and reassured of this) THus the order stood rejected from the outset.

I so state from an inspection, which I was granted leave to make, on February 8, 1965, by this Court's direction, in letter of February 4, 1965. It called for all records of any kind "relating to you" (me); but that right, in affording me self-defense, was disobeyed by staff counsel and then, on protest, refused, by reply of Court.

Any Reports-, till now withheld, whether made in January, 1964, or "November 6, 1964," made by this Judge, can only raise more questions, I submit, deepening the need for further Inquiry by a full Court. Although the transcript indicated, toward end of January, 1964, when I was last testifying, that a Report would at once be made, by Judge, -faced also with his inability to obtain the essential minutes of the three years' hearings in the Fun Fair cases, everything seemd dormant until November, 1964, according to the Petition herein. Then a Report is sworn to as made, dated "November 6, 1964," and no charge is therein recited, according to Petition, and Petitioner of "making baseless charges" against "Judges" or "attorneys", being the leading one of Opinion of Disbarment. Moreover, it may well be that Petitioner may have

prepared the "Report" or "Reports" for submission to the Judge for consideration. It is important, however, to here state that neither Chief Counsel-Petitioner, nor his active assistant, would even, or ever, state whether there was only one or more "reports", despite demands.

The expungement of that record, wherewith all these disciplinary proceedings must fall, is required, I submit, because, also, the Order of this Court, having ordered referral of the charges against Judge Benjamin, the only Judge referred to, before the Judicial Conference forwarded its Letter of Reference of March 4, 1963 also therein

> "Further ORDERED that the Clerk of this Court is directed to forthwith transmit to said Judicial Inquiry on Professional Conduct the complete file in this matter.

That file was, both, the file, made at the Judicial Conference, and with the Governor (referred to the Judicial Conference), and, after reference by Conference, with its statutory agency, this Court's administrative 8-members' Body. It had nothing to do with complaints against any attorney, and only with complaint and demand for Investigation of Judge Benjamin's conduct in the latter days of the Fun Fair cases, as therein set forth . That file was made by writings of clients Ursini, and their Attorney, this respondent. Those letters were written from citizens, who had a duty, and an attorney, whose obligation was well defined by Canons of Ethics No. 1, and a further Canon, barring currying favor with the Judiciary, both looking to an attorney's dedication to the client, and the law. (No. 15).

When this Court transferred that "confidential", "privileged" "sacred" and "secret" file to a foreign Body, for foreign inquiry, and for possible use against its authors, this Court, I submit, acted in total disregard of its own established and well authenticated rule of law, set down in Lewis v. Roux, 222 A.D. 204, 226 NYS 370 . Certainly this 8-member Court could not have intended this, whether or not, its individual servant, as counsel, was aware, of such gross infraction.

The Inquiry was set up in the Fun Fair matters, solely as appeared then, under demand of Ursinis and urging of Governor,

reference to whom also appears in this Court's Order of October 9, 1963.

This Court in October 1963, occupied a two-fold role, but each was distinct from the other. The Court, was Administrative agency of the Administrative Board of the Judicial Conference, but also conducted its "Inquiry on Professional Conduct", being "general" in nature, to deal with broad conditions of violation. (Whatever charges, or basis for such, existed against our adversaries, or me, had already been deposited with the respective local Bar Associations, and the Petitioner knew that in 1963-4-5) The Court was in position , in such dual role, to re-route the judicial file; and the Petitioner, mindless of the specific terms of the Order, in breach, proceeded to misapply the whole . The use by him of the letters, (over severe objection at the time) could never be, as for evidence against the Judge, but was at best only statement, by its authors, of the nature of the misconduct alleged. Therefore his objective were to turn them on their authors. In fact he warned the Ursini witness that his statements would be used against him on any prosecution, when he testified further. In this connection, referring to a similar use of "memoranda" allowed by an Order of court, Chief Judge Cardozo , quoted by this Court in the Lewis case ante, denounces it as

> "something more than error in the exercise of power. It is an assumption of power where none has been confided". (p.78)

THis Court emphasized the overriding "public interest" in protection of the authors.

I submit that the breach of the Order in misapplication of that file, having produced the Inquiry proceedings resulting in alleged "finding of guilt" in this unmade author, as to the MAIN and/charges, as stated at the outset of this Court's Opinion for disbarment of June 29, 1964, and all the resultant, other, noticed "charges" of the Petition, warrants expungement of the transcript, upon which the Report, and "charges", are allegedly based, and the disciplinary proceedings, with its weirdly premature disbarment Order. This may be done without prejudice to First Department proceedings and/or charges there pending against me.

My present emphasis upon a full Body participation, grows out of a prior experience. Immediately preceding the first responsive letter we had received, in nine-months of inaction by the Presiding Justice, (after many letters of demand, concerning serious allegations of judicial "crudities" etc., at instance of Judge Benjamin in Court below in the Fun Fair cases, addressed to the Presiding Justice only we addressed each of the 8 Judges, by letter in recapitulation of past developments. It must be borne in mind, that Judge Benjamin had been named by the Presiding Justice, as we were then informed, to sit as a Kings County Judge over our Queens County case complex, on April 4, 1960; and an administrative Order was made, so that he was assigned to an Extraordinary Special Term, Part IV for Queens, to preside over our cases. And he did, for three years; during all of which time, progress reports were deposited with the Departmental Director of this Department, because of the unusual history of those cases; and in fact the Director tendered in writing, his official gratitude for my contribution to the cause of the administration of justice. These letters are on file herein.

My emphasis upon full Body participation arises because the acts of diversion and distortion of the Orders of this Body, and the purposes thereof, by subordinates of this Body, occurred, despite the letter of the Court, by its Clerk, delivered with the Order, dated October 9, 1963, and the further letter of the Presiding Justice to me, dated November 14, 1963, both defining that Order, and as amended on October 30, 1963, as, for making a record of complaints of the Ursinis and myself, and despite Judge Baker's repeated, two-fold rulings, in keeping with such definitions, and against the Petitioners drive, in the opposite direction, for my prosecution instead. Thus even the Governor's assurances to my clients and me were ignored.

I am attaching hereto a letter of mine, addressed to Judge Baker, which reflects what was then going on. (Exhibit D), and the flouting process, ignoring orders, rulings and judicial definitions. The decisions on the judicial side of the Court, by less than the full eight Judges, were bound to take on, herein, the bizarre character that they have, each, as a natural result of the

earlier bizarre events in the Inquiry.

It is submitted that, if this requested administrative review of this Body's own recorded actsand actions, is not made, covering subsequent as well as original events,-namely, those prior to September 25,1963, as well as those after October 9,1963,- then the judicial side of this Court, acting by the lesser number provided for by Section 82 Of the Judiciary Law, will be repeatedly relegated to the necessity of reviewing its own conduct in administration. I submit that this would be in violation of the spirit, if not the letter, of the constitutional prohibition, barring a Justice of this Court from reviewing his own decisions.(See e.g., In re Mawoido's Estate 60 NYS(2) 345 citing rule). ***

*** See additional supplemental affidavit on this Court's "Inquiry" and its Order of October 9/30,1963.

(b) APPLICATION FOR REARGUMENT

We are asking reargument of our motion for transfer of this disciplinary proceeding ,-of course in the light of all the foregoing, never hereinbefore so assembled and interrelated by us for the Court, herein. Transfer is asked to the First Department, whose Bar Association had, for many months already, prior to the order of this Court of October 9,1963, the same underlying facts and complaint against me from the same sources, and parties, and to which I made my Answer, there on file (since about March,1963). All issues may there be consolidated and duly disposed of. That complaint was taken there, because I was admitted in that Department, I had my office there, and I practised there, and I resided there.

It is now known that Judge Benjamin redirected the matter to the Judicial Inquiry ,-not content with the results of his prior directions to my adversary Albert A.Dupont, Esq. to take the complaint to the Bar Association in 1stDepartment.

This Court's latest decision fails to take into account, it would seem, the respondent's frame of mind, while before its Referee. The case authorities hold that the frame of mind, of confidence or no, of the litigant, toward the sitting Court, is equally essential to the due process of law, requiring a fair hearing.

In our moving papers, I swore as follows:

> "5. I have no confidence and do not believe that I can receive a fair or impartial hearing or trial at the hands of this Court, or any judge or referee subject to its supervision or jurisdiction; I have no confidence that I can receive fair treatment at the hand of any designee of this Court in this proceeding, whether it be in its institution, prosecution, conduct or upon a report to be rendered herein; the facts give rise to and justify that lack of confidence.".

We have already cited case authorities; but none in my opinion, so aptly states the obligation of the Court and Judge, as the opinion rendered by the President Justice of the Common Pleas Court, an inferior court, perhaps, of Philadelphia, accompanying his own decision to withdraw, on litigant's motion . Freely expressing his "resentment" of the movant's attitude, but broadly denying

"that I or my Judge is insulated from criticism,"

he concluded (as reported in Philadephia Inquirer, February 20, 1963, front page):

> "It is vital, it is of the essence of our judicial process, that as each litigant enters the portals of our courtrooms, and submits his cause to the judgment, the learning and the honor of the judge, if he must leave these portals disappointed and defeated, no part of his disappointment shall rise from DOUBT with respect to the fairness and objectivity of the judge."

The Court of Appeals, in Oakley v. Aspenwall, 3 N.Y. 547 550, ruled:

> "The urgency of a particular case is not so much to be regarded as the elevation and honor of the Courts of Justice, whose dignity and purity constitute a main pillar of the state."

adding

> " Nor ought he (the Judge) to wait to be put in mind of his disability, but should himself suggest it and withdraw." .... after securing the wisdom and impartiality of the courts, in their judgments, it is important that the Courts should be free from reproach or the SUSPICION of unfairness."

I know of no authority for suspension or reservation of, or for postponement of such bias issue. (See analogous Re Attorney, 83NY16.

In the light of the decision, postponing the issue of transfer, these facts of record should here be added:

(1) Like Judge Baker, who presided over the ill-fated "Inquiry", I have not known Hon. Walter R. Hart, Justice, referee-designate, also under order to report back to this Court. Yet Judge Baker, after first ruling unreservedly upon my motion, and at once and repeatedly, that he had no jurisdiction over the subject of the charges against any Judge, (submitted to his forum by the authorising Order of this Court) is now cited, most surprisingly, in this Court's opinion of June 29, 1965 for disbarment, in this language, although no such charge was ever before him, or made herein against me, on any notice :

> " By orders made in October, 1963, this Court directed the Judicial Inquiry on Professional Conduct in Kings County to inquire into and report... The Justice presiding at the Additional Special Term, Kings County, before whom such inquiry was conducted, found that respondent was guilty of making baseless charges against the judges..."

(2) This Court, in "Re Broome, an attorney", 13 A.D.(2) 657, 213 NYS(2) 821, only recently in a current disciplinary proceeding, as appears, held that a ~~Referee's~~ report - "is in no way binding upon the court, which must itself determine whether or not the charges have been sustained." This Court there cited Gehr v. Board of Education, 304 NY 436, making the report, "in no way binding", subject to "the conscience of the Court".

I submit that such conscience might be exercised in vacating, or at least staying the operation of the "final" order of disbarment, especially where the Petitioner, notwithstanding all issues are now to be heard, uses the very order and opinion of disbarment to sway the Court, in its consideration of any issue I raise, even the very constitutional one of lack of due process, (STATE Co. Art. I Sec. 6; U.S. Con. 14th Amendment) (ALSO FIRST AMENDMENT, US Const)

(3) The new Justice -referee, has, so far as I am aware, been a colleague of Judge Benjamin on the Kings County Bench for some 17 years; and, as in Judge Baker's case, he would have to be called upon to evaluate the conduct of Judge Benjamin, a coordinate Judge, and also perhaps of this Court, which has now twice

affirmed disbarment, and a finding of lack of character and fitness in me to practise law. This I submit, is a burden of an unbearable nature to place upon a Referee.

(c) Adversary Dupont is on record as knowing all the Judges of the Second Department, and further proclaiming to my clients that they could not win, nor I for them, before any Judge, against him; and the record herein before the Judicial Conference discloses that Dupont was given a veto power in the selection of one of two Justices to preside over the Fun Fair cases, preferring Justice Benjamin of this Court, then in the Court below, when this Court intervened at the time. In 1963, when Judge Benjamin withdrew from the cases, and other Judges in Queens County at Special Term Part I (over objection) took on motions, it was noted that either Judge Benjamin had communicated or been called thereon, or the Judge expressed some knowledge of the growing charges against me in the "Inquiry", notwithstanding the Petitioner's constant insistence of their "secret" and "confidential" nature. Of course my adversaries made open references to that pendency, and Mr. Dupont was always a ready vehicle.

I submit, that if this Court had undiscriminatingly extended to me the benefits of case precedents, or concurrent holdings, made by this Court itself, -or for this Court, by reversal in the Court of Appeals, I should not now be in this plight, of disbarment, without any of the prerequisites. I was thus deprived of the equal protection of the laws, as guaranteed by our Constitutions. Nor should I have ever been a respondent here to any charges! (14th Amendment U.S. Constitution)

This Court's decision, barring access, to me and clients, on March 11, 1964 (N.Y. Law Journal) to the records of the Fun Fair cases, and their three-year transcript, for use in preparing appeal, for my defense against the growing charges in the Inquiry, and for fulfilment of the Conference reference of the judicial charges, foll soon by dismissal of their appeal, (for non-readiness!) and this Court further barring, by Letter of the Court, dated May 5, 1965, my access to the "report" or "reports" of Judge Baker, and to the transcript of the

Inquiry, are crucial instances of deprival. The Inquiry's grab for jurisdiction from the First Department, in a race therefor, undertaken by Judge Benjamin, all as appears of record, depriving me (a) of the right to confront accusers, and (b) notice of charges, and (c) the protection afforded by Canon of Ethics, Section 1, (d) replacing the Bar Association open hearings with the secret chamber of the Inquiry, are further instances. (See cases, Werfel v. Fitzgerald, 260 NYS 791, 23 AD(2) 306; Re Branch, 178 AD 585, 165 NYS 688; Re Eldridge, 82 N 161; Re Joseph, 125 AD 544, 109 NYS 1018; Re Greenfield-Rothstein, citin with approval Re Manheim, 99 NYS 87, 113 AD 136; Re Rockmore 127 AD 499, 111 NYS 879) Greenfield case in NLLJ, July 22, 1965.

The use of the secret, confidential and privileged file upon its turnover by this Court (in its Order of October 9, 1963 letter addressed by the Ursinis and me, to the Judicial Conference and the Governor, in concurrent jurisdiction, to be used by and in the "Inquiry on Professional Conduct", not for the purpose of investigating allegations of judicial misconduct, but against its authors acting under compulsion of duty and invitation of statute, is another instance of deprival. (See Lewis v. Roux, 222 A.D.204, 226 NYS 570)

The refusal of this Court at Special Term, New York Count to serve and file Answer, or other written submission, under oath, and to submit its records, and transcripts, held under its sealed custody, in the mandamus-and-prohibition proceeding (Index No. 2671-1965) (as is required of a public official or Body), is another instance of deprival. (See Kurtz v. Krone (3rd Dept.) NYLJ, April 1st, 1965 See Sections 7804-5-6 CPLR. The Court acted by Messrs. Wegman and Klein.

The use of the Judicial Inquiry on Professional Conduct to present charges, against a specific attorney, already prepared and unrelated to ambulance chasing, condemnation practises, or other general conditions in the Courts, as prescribed in the Establishing Order of December 17, 1962, and described by the cases in point, discriminated against me. There can be no doubt of this. For on the first day after opening, with the appearance of the first witness one William Weintraub, on the stand to testify, to wit, on October 24, 1963, the entire evidence produced in that session, was exclusively related to the eventual Charge Listed in the Petition as " 8c ". I did not know of, or discover this, until on about February 8, 1965.

Judge Baker however, was reassuring me that no charges were being entertained, nor would be, against me, under the authority of his Orders. The importance of Judge Baker's "Report" or "Reports", which have been withheld from us, is vital, and would, or may, reveal that charges should never have been issued against me. The denial thereof, casts a shadow over this Court's disposition toward me.

(See cases concerning the "general" nature of the "Inquiry" Re Judicial Inquiry Anon. 19 Misc.(2) 491,189 NYS(2)79 81 "Baker J.: "not to prove a pending charge"; Re Brooklyn Bar Assn.,223 AD 149,227 NYS665,7; Peo.ex rel Karlin v.Culkin,(Cardozo,Ch.J.) 248 NY 465.

This Court has now attached to its decision, for the first time, "not to be published", presumably because hearing on all the issues is now about to be commenced. I was deprived of that important protection, given to Attorneys in Subd.10 of the Judiciary Law,- publication having taken place on July 2,7 and a full-page-length, front-page spread on July 12,1965 and on October 1, and December 2,1965, because, in turn, this Court had deprived me of the benefits of subd.6 of the same section, which requires

> "Before an attorney...is suspended or removed as prescribed in this section, a copy of the charges against him must bedelivered to him personally...and he must be allowed an opportunity of being heard in his defense.**"

This Court, if predetermined, while granting secondary forms of relief, to adhere to its act of disbarment, thus bears out the feelings expressed by my clients, in their Petition and affidavit, filed herein on January 6,1965, praying for adjournment of all consideration of charges against me, brought by their adversaries, until after their litigation is completed, at least in the trial Court, and their day in that Court is complete. That is normal practice. Its absence leads to the conclusion they feared, that my separation from the Fun Fair cases was, and is, the objective, - where replacement is difficult, because of complexity of issues.

It seems that before I enter into any hearings, that my status, as a member of the Bar in good standing, not subject to the clouds of findings of the parent Court, now standing twice affirmed, pointing to "lack of character and fitness" (Opinion

June 29,1965), should be restored.

Proceeding with hearings, before Referee, before correcti in order are made, eliminating the absolute finding of guilt on th non-existent charge, toward the outset of the Opinion, as well as other premature condemnations, opening to our view the documents needed for our defense and its preparation, -would seem premature.

(C) APPLICATION FOR STAY (D)

In accordance with the foregoing, and in connection with our Notices of Appeal, duly filed herein upon the two Orders of this Court, entered June 29 and September 29,1965, disbarring, and denying vacatur thereof, we ask for stay of the hearings and pending appeal to the Court of Appeals, based in claim of constitutional violations, both State and Federal.

We have, till now, not asked for stay of operation of the Order of Disbarment, believing that our application for vacature thereof as a nullity and its successor application to the Appellate Division, First Department, to restore my name to the rolls at once, ("dismissed", not denied) made that request unnecessary; we were thus refusing to recognise the Order as a valid one, and continue to so view it. All now agree that the issues are all to be heard out, and that should be in an unshackled forum, and by an unshackled respondent, to be sure. No one, not even the Petiti may openly dispute this.

The Petitioner has waited till now, and since the order for leave to answer and designating the Referee, entered Septembe 29,1965, undoubtedly recognising both the pendency of appeal, and the force of the Re Broome case, reversing this Court's Orde of disbarment therein, despite the fact that the respondent deli ately walked out of the reference room of a Referee, he accused o bias, and to whom he refused to submit himself. The respondent's

appeal was based in claim of denial of due process, if forced to submit to a biassed tribunal, and he was sustained. Thus it were futile to proceed, with such issue central to this case, in addition to the presence of the strange order of disbarment, and that basic issue also present. (Re Broome, 10 N.Y.(2)942.)

No harm can come from either stay of enforcement or stay of hearing. Not the Petitioner, but we, are interested in as swift a set of proper hearings as possible. The Petitioner already has his objective, - disbarment, - which he coolly prizes, having disclaimed under oath, as "unfounded", our contention that an order of disbarment without hearing, was denial of due process. This Court has, at least repudiated that contention of Petitioner. But even the Petitioner himself has changed. For in his answering affidavit on the transfer application, he conceded:

> " The only legitimate issues to be determined before Justice Walter R. Hart, are whether the charges alleged in the petition are supported by competent evidence."

Certainly now, no further valid reason exists for denying stay, or vacatur, of the disbarment order.

The Petitioner has openly boasted that he had fine-toothcombed my entire litigation record in other cases as well, aside from the voluminous Fun Fair cases. Not only did he find in the Fun Fair cases, commendations by Judge Benjamin of me and my practice before him for a three-year period, repeatedly expressed in the highest terms; but the Petitioner and his staff have not, of that extensive search, come forward with a single instance of perjury, subornation or false swearing, as a charge against me. Nor in this proceeding has he yet offered any contradiction under oath of a single statement of mine, whether made as testimony in the Inquiry or herein.

NO PREVIOUS APPLICATION HEREFOR HAS BEEN MADE.

WHEREFORE deponent asks for the relief of the annexed Order.

SWORN TO BEFORE ME THIS 6th DAY OF JANUARY, 1966

William R. Klein

MAX B. SELIT
Notary Public, State of New York
No. 24-3500445
Qualified in Kings County
Commission Expires March 30, 1967

Notary Public
State of New York
No.
Qualified in
Commission Expires March 30, 1967

SAME TITLES

County and State of New York::SS::

WILLIAM R. KLEIN, being duly sworn, deposes andsays:

This further information is submitted in connection with this application to expunge the Inquiry transcript.

After Inquiry Counsel had secretly placed into the record, the testimony of a witness,one WILLIAM WEINTRAUB,Esq., solely to provide"evidence"for the ultimate Charge"8(c)"of the Petition of December 16,1964, against respondent(not discovered by me until February 8-9,1965),on November 6,1963,he allowed himself the following luxuriant statement, knowing that Judge Baker had already on October 23 and 30,1963 ruled out all inquiry as to Judge Benjamin's conduct,as beyond his jurisdiction:and competence as presiding Officer of the Inquiry hearings: (Page 40009,present John R.Ursini,witness, and deponent as his counsel:

> "Let me state this for the record.So that it will be immediately clear,to both Mr.Ursini and Mr.William Robert Klein,- the SOLE AND EXCLUSIVE PURPOSE OF THIS INQUIRY is to elicit facts that these respective witnesses and others may have, if any,in support of the various CHARGES THAT HAVE BEEN MADE BY LETTERS TO VARIOUS AGENCIES and other means of communication,including petitions and motions made in Court. THAT IS THE SOLE OBJECTIVE".

THE"charges"were solely those of the Ursinis and their attorney, the"letters"were those containing same,referred to in the Order of October 9,1963,and they were directed solely at the conduct of Judge Benjamin in the Fun Fair cases.Yet on that day,Ursini as witness on the stand, was,in most intimidating manner,warned that anything he would say under oath that day would be used against him;and when Judge Baker received my serious objection for the apparent inconsistency of Mr.Solomon A.Klein,as theretofore already demonstrated on that record on previous days,he stated reassuringly that that warning to the witness was the usual practise for every witness called in the Inquiry. The record shows that no other witness was ever subjected to that line of approach, including the adversary attorneys, who were the putative respondents in the Inquiry ,so far as the Order of October 9,1963 referred to attorneys. Actually, the transcript, for the two days of their appearance ,reveals a generou

"red-carpet" treatment accorded by Staff Counsel to each, with obvious avoidance of use of any minutes or documents in the questioning that might in anywise contradict them; and their testimony was replete with material misstatements and material withholdings, as I know those minutes, and as I know the facts to be to the contrary. The hearings were then closed on the 28 and 29th of January, 1964, showing Counsel's having avoided all witnesses in the litigation, whose testimony either tended to exonerate deponent of any misconduct, *** or which would incriminate adversaries Dupont and Gottlieb. They were "whitewashed", - a reading of their testimony and the manner of questioning of staff counsel, will at once disclose.

Now, irrespective of Mr. Solomon Klein"s broad statement of the "sole and exclusive purpose " of the Inquiry, this Court left no doubt that it wanted to terminate and end the Inquiry abruptly, by two decisions appearing in the New York Law Journal: one on January 24, 1964, denying any Investigation of Judge Benjamin as referred to this Court by its Letter of Reference of March 4, 1963, and its later two-fold decision of March 11, 1964, sealing, and barring access to, the records of the Fun Fair cases either for the purposes and uses of the Inquiry or for the Investigation of Judge Benjamin, by the Court as a Conference agency (Section 214 J.L. ante).

The annexed photostat letter of mine December 11, 1964, sent to Judge Baker, before any charges were made against me, reflects truly what had occurred in the Inquiry, and particularly in the last Paragraph makes reference to a critical development in the continuing Fun Fair cases, which undoubtedly spurred Solomon Klein into petitioning action against me. There had been 10 months of silence, after Judge Baker, in January, had, on the record, stated that he would at once make his report, assuming that there could be no testimony from me, because all essential records of the Fun Fair cases, particularly the three-year-transcript of those cases, were lost.

SWORN TO BEFORE ME THIS 6th DAY OF JANUARY, 1966.

MAX SELIG
Notary Public, State of New York
No. 24-3700145
Qualified in Kings County
Commission Expires March 30, 1967

William R. Klein

*** See U.S. (Meers) v. Wilkins, U.S.C.A (2nd) decided 1-6-64 (N.Y.L.J. 1-28-64)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND DEPARTMENT

- x

In the Matter of

WILLIAM ROBERT KLEIN,
an attorney.

ANSWER

SOLOMON A. KLEIN,
Petitioner

WILLIAM ROBERT KLEIN,
Respondent

- x

Respondent, for his answer, as authorized by order of this Court, entered on October 1, 1965, and reserving all objections to said order:

1. Denies each and every allegation contained in Paragraphs First, Second and Fifth of the petition, except that he denies knowledge and information sufficient to form a belief with respect to the alleged report of Hon. Edward G. Baker, dated November 6, 1964, and except also, that respondent admits that this Court has made and entered orders dated December 19, 1962, October 9, 1963, October 30, 1963 and November 23, 1964, respectively, to the originals of which report and orders, respondent begs leave to refer.

2. Denies each and every allegation contained in Paragraph Fourth of the petition, except admits that respondent resides and maintained an office for the practice of the law, in the County of New York, State of New York, and admits that he has practiced law in counties other than the County of Kings and admits that he has appeared in a matter whose venue was Queens

County, but which was in part heard in a courtroom in Kings County at the request and for the convenience of the Justice assigned to and presiding over the Extraordinary Special Term of the Queens County Supreme Court.

3. Denies each and every allegation contained in Paragraphs Sixth and Seventh of the petition, except respondent admits that he appeared before the Hon. Edward G. Baker at an Additional Term of the Supreme Court, County of Kings, on January 23 and January 24, 1964, and that an oath to testify truthfully on such occasion had been administered to respondent.

4. Denies each and every allegation contained in Paragraph Eighth of the petition and all the subdivisions thereof, except that prior to March, 1964, respondent had been retained as attorney for Fun Fair Park Inc.

5. Denies each and every allegation contained in Paragraph Ninth and Eleventh of the petition.

6. Denies any knowledge or information sufficient to form a belief as to the allegation of Paragraph Tenth and Paragraph Twelfth of the petition.

FOR A FIRST AFFIRMATIVE DEFENSE,
RESPONDENT ALLEGES:

7. That the petition fails to state facts sufficient to support its conclusions and fails to state facts sufficient to constitute any charge of misconduct in respondent and in his office as an attorney and counsellor-at-law.

FOR A SECOND SEPARATE AFFIRMATIVE DEFENSE, RESPONDENT ALLEGES:

8. That upon information and belief, each and all of the charges and their subject matter arises in and out of certain litigation, known as the Fun Fair Park Inc. cases, and in particular out of matters then and now pending in the Supreme Court, Queens County, and bearing Index No. 2903=1960 Queens County Clerk's Office.

9. That upon information and belief all of the alleged evidence in support of the charges of the petition and the said charges came into being and have been recorded in and through the office of the Judicial Inquiry on Professional Conduct, referred to in Paragraph Second of the petition.

10. That, upon information and belief, the said records contain evidence and matters, including rulings and determinations of the said Hon. Edward G. Baker, presiding over said Judicial Inquiry which were and are necessary for the defense of respondent against any and all charges of the petition, and that the said records have, by directions and orders of the petitioner, as officer in charge of the office of the Judicial Inquiry on Professional Conduct, and this Court, been withheld from this respondent and sealed, suppressed and barred from access by respondent for his use in resistance and defense of any and all charges.

FOR A THIRD AFFIRMATIVE DEFENSE RESPONDENT ALLEGES:

11. That charges of corruption in the administration of justice were made by respondent's clients in the said Fun Fair Park Inc. litigation, on or about the 9th day of October, 1963,

and by respondent, and that, upon information and belief, the justices of this Court purported to order and direct the Judicial Inquiry on Professional Conduct in Kings County to inquire into and report thereto.

12. That, upon information and belief, the said Judicial Inquiry thereafter proceeded under color of such order and direction and conducted secret sessions, from which respondent was barred, called witnesses secretly, including respondent's clients, and induced them to testify against respondent, over their objection and without any consultation or cooperation or preparation with respondent or his clients as authors of the charges referred to herein, and despite due and timely demand therefor by respondent on his own behalf and that of his clients, as complainants.

13. That, upon information and belief, the Judicial Inquiry was not utilized to investigate the said charges, but was utilized and employed for the purpose of creating and producing charges against respondent and respondent's clients and without inquiry or endeavor to obtain evidence in furtherance of the aforesaid charges of corruption in the administration of justice.

14. That, upon information and belief, the Inquiry proceedings were terminated and closed by Hon. Edward G. Baker, and a report made by him without any finding of professional misconduct on the part of this respondent.

15. That, upon information and belief, in fact and in law, the Inquiry was an adversary proceeding and respondent was deprived of his right to confront and cross-examine any accusing or other witnesses called therein; that the Inquiry re-

jected and refused to hear any witnesses who were available, and whose testimony might tend to establish respondent's innocence; and respondent was further deprived of his right to be heard in opposition to any witnesses called and to any evidence presented or claims or charges advanced at the aforesaid secret sessions of said Inquiry and any other sessions of its personnel..

16. That, upon information and belief, the Judicial Inquiry had no right or authority to conduct such an inquiry, as hereinabove set forth, and that the same was contrary to its own rules and orders.

17 . That by reason of all of the foregoing, any and all charges against respondent contained either in the petition or the aforesaid report or reports of said Hon. Edward G. Baker or in the final order of alleged disbarment entered June 29,1965, were created and now exist without due process of law, in violation of the Constitutions of the State of New York and the United States of America and of the Judiciary Law of the State of New York and the laws and rules governing the aforesaid Judicial Inquiry on Professional Conduct.

FOR A FOURTH AFFIRMATIVE DEFENSE, RESPONDENT ALLEGES:

18. That heretofore respondent and his clients aforesaid addressed and sent to the Judicial Conference of the State of New York and to the Governor of the State of New York, respectively, a series of letters and communications requesting and demanding investigation of judicial misconduct on the part of a justice of the New York State Supreme Court and in support of

formal charges duly filed with said authorities, all as provided for by statute and required by the Canons of Professional Ethics of respondent as an attorney and counsellor-at-law; that such letters and communications were intended solely for such purpose of investigation and no other.

19. That upon information and belief this Court, as provided for and required by statute governing its functions in supervision of the administration of justice within the Second Judicial Department, did receive said letters and correspondence from the Judicial Conference for such purpose, and did transmit the same to the office of the Judicial Inquiry to be used for another and hostile purpose; and that said file and its contents were confidential and privileged in that the same were entrusted to public officials and bodies for a certain legal and public purpose.

20. That the charges against respondent aforesaid arose from such misapplication of the aforesaid letters and communications and as such constitute a violation of the public policy of the State of New York, the Judiciary Law and the Canons of Ethics of this State, applicable respectively to attorneys and to members of the judiciary.

FOR A FIFTH AFFIRMATIVE DEFENSE, RESPONDENT ALLEGES:

21. That a Justice of the Supreme Court of the State of New York against whom charges were made by respondent's clients is now a member of the Appellate Division of the Supreme Court, Second Judicial Department.

22. That this Court did, on June 29, 1965, make its alleged order of disbarment against this respondent for a reason set forth by this Court, among others, that respondent had been found guilty of making baseless charges against members of the judiciary and members of the Bar; that said finding was made while the aforesaid justice was a member of this Court and while the said charges against him were pending undetermined.

23. That respondent has never been served with any statement or notice of said charge, that he has never been anywhere called upon to meet any such charge, nor had any opportunity to do so arisen to respond to any such charge, and all of which is or should be known or should have been known to this Court, and the Justices thereof.

24. That prior to the alleged authorization or service of the charges herein against respondent, respondent and his clients instituted, and there is now pending undetermined, before the Administrative Board of the Judicial Conference of the State of New York, a proceeding for the correction of abuses in the administration of justice in the Second Judicial Department of the Appellate Division, to which the said clients felt themselves and the courts subjected.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE RESPONDENT ALLEGES:

25. That the issues raised by the petition in this answer have no judicial function; that the result of any adverse

determination to the respondent will be the giving to the aforesaid order of disbarment a semblance of constitutionality; that the result of either a favorable or unfavorable determination to either side cannot, as a result of any existing order of any court, eventuate in the giving of a rule or judgment by any court of competent jurisdiction.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, RESPONDENT ALLEGES:

26; That prior to the service and filing of the petition each and every act alleged as part of the charges set forth in the petition to have been performed by respondent was and duly became the subject of judicial treatment and disposition in respondent's favor by a judge or justice of a court of competent jurisdiction, and the same may not now be entertained.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, RESPONDENT ALLEGES:

27. That each and all of the acts alleged in the petition to have been performed by the respondent, and to the extent that any were so performed, were done in good faith and in performance of respondent's duties and obligations as an attorney and counsellor-at-law to the courts, his clients and the administration of justice.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE, RESPONDENT ALLEGES:

28. That prior to the institution of this proceeding and upon information and belief, to the knowledge of petitioner,

at all the times herein mentioned, there was and is now pending within the jurisdiction of the Appellate Division of the Supreme Court, First Judicial Department, a proceeding substantially in duplication of the instant proceeding and initiated by the same persons, parties and interests as those who caused the institution and initiation of this proceeding.

WHEREFORE, respondent prays for an order dismissing the petition.

DUBLIRER & HAYDON
Attorneys for Respondent
Office & P.O. Address
52 Broadway
New York, N.Y. 10004

Verification by William R. Klein dated October 11,1965.

A 325

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At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 29th day of September, 1965

Present—HON. GEORGE J. BELDOCK, *Presiding Justice.*

" HENRY L. UGHETTA,
" MARCUS G. CHRIST,
" ARTHUR D. BRENNAN,
" L. BARRON HILL,
" ~~SAMUEL RABIN,~~
" ~~JAMES D. HOPKINS,~~
" ~~A. DAVID BENJAMIN,~~ } *Justices.*

In the Matter of William Robert Klein, an attorney.

Solomon A. Klein, Petitioner;

William Robert Klein, Respondent.

Order on motion to vacate order of disbarment, etc.

9/29/65

A proceeding having been instituted in this court upon the petition of Solomon A. Klein, verified the 16th day of December, 1964, in respect to William Robert Klein, an attorney and counselor-at-law, admitted to the Bar on January 8,1928, at a Term of the Appellate Division of the Supreme Court in the First Judicial Department and, after revocation of his license having been re-admitted to the Bar as William R. Klein on January 5, 1955, at a term of the same court, petitioning for an order directing that the respondent, William Robert Klein, as an attorney and counselor-at-law be disciplined upon the charges set forth in said petition, and the respondent having filed an answer, and this court by order dated January 13, 1965 having granted respondent's motion to enlarge time to make motionsin said proceedings, and having enlarged his time to the 16th day of February, 1965; and the petitioner having moved by notice of motion, dated May 20, 1965 to discipline said respondent, for the acts of professional misconduct set forth in the above mentioned petition, and the respondent having cross moved, by notice of cross motion, dated June 1, 1965 to dismiss the petition and for other relief; and this court by order dated June 29, 1965 and entered June 29, 1965 having disbarred respondent from the practice of law; and the respondent having moved to vacate the order of disbarment, for permission to serve an amended answer to the petition in order to put in issue its various

allegations, and for this court to set the issues down for a hearing, by order to show cause, dated August 3, 1965.

Now on reading and filing the affidavits of William Robert Klein and Charles Haydon in support of said motion and the affidavit of Solomon A. Klein in answer thereto; and all the papers filed herein, and the said motion having been submitted by Mr. Charles Haydon of Counsel for respondent and submitted by Mr. Solomon A. Klein, the petitioner appearing in person; and due deliberation having been had thereon:

It is Ordered that the motion be and the same hereby is granted to the extent of permitting respondent to serve an amended answer on petitioner within ten days after the entry of this order; and it is further

Ordered that thereupon the matter be and the same hereby is referred to Hon. Walter R. Hart, a Justice of the Supreme Court, as Referee for the purpose of: (a) conducting hearings as to the issues raised by the petition and the denials to be asserted by respondent in his amended answer; and (b) rendering a written report setting forth specific findings as to such issues; and it is further

Ordered that the motion is otherwise denied.

Enter:
JOHN J. CALLAHAN
Clerk

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND DEPARTMENT

- x

In the Matter of

WILLIAM ROBERT KLEIN,

Attorney-Respondent

- x

STATE OF NEW YORK }
COUNTY OF KINGS } ss.:

1660

SOLOMON A. KLEIN, being duly sworn, deposes and says:

(1) I am the petitioner in the above-entitled disciplinary proceeding and am fully familiar with all the facts and circumstances.

(2) I submit this affidavit in answer to the respondent's motion requesting this Court to vacate its order of disbarment, made and entered on June 29, 1965, and to grant him a hearing before a Referee upon the charges of misconduct which he now denies, for the first time, in his moving affidavit.

(3) The disciplinary proceeding was duly instituted on December 17, 1964 by the service upon the respondent of a verified petition alleging that respondent was guilty of seven specific acts of gross professional misconduct.

(4) On January 6, 1965 the respondent served and filed an alleged answer "in demurrer and bar" in which he raised numerous objections addressed solely to the jurisdiction of this Court to discipline him. As correctly stated in this Court's decision directing disbarment, the respondent's so-called answer "does not contain a denial by him of any of the factual allegations of the petition." Nor does it contain a general

denial of any of the charges.

(5) After service of his alleged answer "in demurrer and bar" the respondent moved for an enlargement of time to make motions. This Court by order dated January 13, 1965 granted the request and enlarged his time to February 16, 1965 "for the purpose of making such motion as he may be advised."

(6) In addition, between February 8, 1965 and April 29, 1965 the respondent, acting pursuant to this Court's authorization to examine the records of the Judicial Inquiry, appeared at the Judicial Inquiry's office on thirty-two separate days and there examined the minutes, exhibits and records in its possession pertaining to the charges against him.

(7) Shortly after the respondent commenced to examine the Judicial Inquiry's records he served a sheet of paper, dated February 13, 1965, purporting to be a notice that with respect to his "Demurrer and Bar of the within proceeding" he will move for final order of dismissal of the disciplinary proceeding "after the determination" of an application he had made to the Judicial Conference of the State of New York. In said application, dated February 10, 1965, the respondent requested, among other things, that the Judicial Conference direct this Court "to withhold its employees and agents from proceeding any further" with the disciplinary proceeding instituted against him.

(8) After the lapse of more than three months, during which the respondent examined the Judicial Inquiry's records as aforesaid, your deponent served him with a motion returnable May 28, 1965 for an order imposing discipline upon the ground that the charges of his gross professional misconduct as alleged in the petition had not been denied and that his time within

which to make motions addressed to the petition had expired on February 16, 1965.

(9) On the return day of the motion, the respondent offered nothing in denial of the charges, but instead requested an adjournment which this Court granted to June 11, 1965.

(10) Having obtained an adjournment, the respondent on June 2, 1965 served a notice requesting your deponent to withdraw the motion to impose discipline and stated that if his request be denied, he will file a cross-motion to dismiss the proceeding.

(11) He then filed an affidavit, sworn to June 3, 1965 opposing the imposition of discipline. In said affidavit he again deliberately refrained from denying any of the allegations of the petition. Instead, he asserted that to impose discipline "before day in Court has been had" would be "short-cutting due process" and that his answer "in bar and demurrer" to the petition is implicit with "general denials."

(12) Before this Court could render its decision the respondent on June 7, 1965 instituted a proceeding in the Supreme Court of New York County by which he sought, among various other things, an order prohibiting the disciplinary proceeding upon the ground that this Court lacked jurisdiction. On June 14, 1965 the New York Supreme Court denied the respondent's application with a memorandum opinion reading as follows:

> "IN RE URSINI (McCoy) - Motion is in all respects denied. After the oral argument and a reading of all the papers, there appears to be no basis in law or fact for the relief sought."
> (N.Y. Law Journal June 14,1965, p.16)

(13) Thereafter on June 29, 1965 -- the allegations of gross professional misconduct specified in the petition having remained undenied -- this Court made and entered its order of disbarment.

(14) The following month on July 26, 1965 the respondent served and filed a notice of appeal to the Court of Appeals.

(15) In an attempt to support his present application to vacate the order of disbarment and to refer the matter to a Referee, the respondent makes the sham and frivolous assertion that his plea "in Bar and Demurrer" served January 6, 1965 was intended as "indicating to the Court a denial of the facts alleged" in the petition as well as reasons for dismissing the petition (Resp.'s aff. p.2). And he further asserts that he has "never been afforded an opportunity to be heard, as required by the Judiciary Law, §90."

(16) Your deponent respectfully submits that the denials of the allegations of the petition, now interposed in the moving affidavit for the first time, are sham and frivolous. On the basis of the foregoing facts your deponent further submits that there is no justification whatever for vacating the order of disbarment.

(17) To put an end to the respondent's unfounded assertion that he has been denied due process of law, it is respectfully suggested that this Court might deal with the respondent's application in accordance with the procedure followed in Matter of McEnerney (24 A.D. 2d 459) by referring the matter to a Referee for the purpose of conducting hearings (a) as to the merits of the respondent's excuses for his failure to deny the allegations of the petition and (b) as to the merits of his denials now asserted for the first time.

Sworn to before me this
7th day of September, 1965.

KENNETH L. LAWLOR
Notary Public, State of New York
No. 30-2279375
Qualified in Nassau County
Term Expires March 30, 19[illegible]

A 331

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

- X

In the Matter of :

WILLIAM ROBERT KLEIN, :

Attorney-Respondent. :

- X

Upon the annexed affidavit of William Robert Klein, sworn to July 30th, 1965, and the annexed affidavit of Charles Haydon, sworn to August 2, 1965, and upon all the papers and proceedings heretofore had and referred to in this proceeding,

Let the petitioner, SOLOMON KLEIN, show cause at a term of this Court appointed to be held on ~~August~~ September 8, , 1965, at 9:30 o'clock, in the ~~fore~~noon of that day, or as soon thereafter as counsel can be heard, at the Courthouse, 45 Monroe Place, Borough of Brooklyn, City and State of New York, why an order should not be made ~~herein vacating~~ and setting aside the order of disbarment made and entered herein on June 29th, 1965, setting the issues down for a hearing, and granting such other and further ~~relief~~ as to the Court may seem just and proper in the premises; and good and sufficient cause appearing therefore,

LET service of a copy of this order and the papers upon which it was granted on the petitioner, either personally, or by leaving the same with a person in charge of his office at room 403, Borough Hall Building, Brooklyn, New York, on or before 3 P.M. on August 5, 1965 be deemed good and sufficient service thereof.

Dated: Brooklyn, N.Y.
August 3, 1965

(SAMUEL RABIN) Associate Justice
Appellate Division, Supreme
Court, Second Judicial
Department

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

In the Matter of :

WILLIAM ROBERT KLEIN, :

Attorney-Respondent. :

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

WILLIAM ROBERT KLEIN, being duly sworn, says:

1. I am the respondent herein; I am fully familiar with all of the facts, and I make this affidavit in support of an application to vacate the order of disbarment made and entered herein on June 29th, 1965.

2. The ground for this application is that I have never been afforded an opportunity to be heard, as required by Judiciary Law, §90; the absence of such an opportunity to be heard is a violation of due process of law (Willner v. Committee on Character and Fitness, 376 U.S. 96, 10 L.ed. 2d 224). 83 S. Ct. 1175

3. This Court will recall that shortly after the charges were served, an attorney named Jacob Rassner appeared and requested sixty days to prepare to defend me; the request was refused and only two days were granted; from that time on I have appeared pro se and acted for myself.

4. I prepared the plea "in Bar and Demurrer" and then sought to gain access to the records and minutes of the hearing before Mr. Justice Baker for the purpose of amplifying my objections and meeting the issues; because the custodian of these minutes originally denied them to me and then, after permission was granted by this Court, refused to permit me to have help in making copies, I spent the next several months in copying by longhand over 900 of the total of 1200 pages and voluminous exhibits, to support my objections and my ultimate denials and defenses; when I was unable to finish the copying in longhand, I was denied access to the re-

maining 300 pages of testimony and to the exhibits as well.

5. It was also my intention by the plea "in Bar and Demurrer" to resist the demand of the Petitioner by indicating to the Court a denial of the facts alleged as well as by setting forth the legal reasons why the petition should have been dismissed and relief should not have been granted; as the late Surrogate Wingate pointed out in In Re Herle's Will, 173 Misc. 879, 19 N.Y.S. 2d 263:

> "As is pointed out in Brower v. Nellis, 6 Ind. App. 323, 324, 33 N.E. 672, an answer, strictly speaking, is a pleading by which the defendant in a suit at law endeavors to resist the plaintiff's demand by an allegation of facts, either denying the allegations of plaintiff's complaint, or confessing them and alleging new matter in avoidance, which defendant alleges should prevent a recovery on the facts alleged by plaintiff."

6. That such were my intentions and that the statement of such intentions is not now merely an afterthought are brought out by my affidavit, sworn to on June 7th, 1965, and submitted in opposition to the motion to impose discipline, wherein I stated:

> "A reading of the pleading in bar and demurrer, duly filed in the Clerk's office on January 6, 1965, will disclose the existence clearly implicit, of the general denials (pars. 'g', 'i', and 'k'), * * * ."

7. Insofar as the form of the answer is concerned, the allegations of the petition are such that they fall into that class of allegations which are similar to those appearing in Holland v. Grote, 193 N.Y. 264, 265, wherein the Court said:

> "The respondent demurred to each of these defenses as insufficient in law upon the face thereof, thus raising the questions presented upon this appeal, and which resolve themselves into the one whether the complaint states a good cause of action on the principle, somewhat informally expressed, that a bad answer is sufficient for a bad complaint, * * *."

8. That the petition is a "bad complaint" within the meaning of the Rolland case is demonstrated, for example, by the first of the charges which is alleged in Paragraph Eighth (a); this is purely conclusory with no facts alleged; Paragraph Sixth states that on January 23, 1964, I contumaciously refused to answer proper and relevant questions put to me; there is no allegation as to what the questions were, what they purportedly related to, how they were relevant or what I said or did in response.

9. Then Paragraph Eighth (a), the charging paragraph, assumes there were refusals and that the refusals were contumacious; I respectfully submit that there is not a single fact alleged; it is not as if a charge of contumacy in refusing to answer questions were new to our law; the Supreme Court of the United States has held that it is a violation of due process of law to found a charge on such refusal to answer questions without setting forth the specific questions under inquiry and the frame of reference so that the Court, not the biased prosecuting official, may determine whether the questions were pertinent and relevant (Russell v. U.S., 369 U.S. 749, 8 L.ed 2d 240).

10. So that the Court may be aware of my position and to the extent that facts appear in the petition and conclusions of fact appear therein and conclusions of law, I deny them all.

11. I deny each and every allegation contained in Paragraphs First and Second of the petition, except I admit that this Court purported to make an order on November 23, 1964, and for the terms and legal effect thereof I respectfully beg leave to refer to the same.

12. I deny each and every allegation contained in Paragraph Fourth of the petition, except that I admit that I resided and maintained an office for the practice of law in the County of New York.

13. I deny each and every allegation contained in Paragraph Fifth of the petition, except I admit that this Court purported to make an order on October 9, 1963 and to amend the same on October 30, 1963, and for the terms and legal effect thereof I beg leave to refer to the same, and I allege affirmatively that alleged misconduct or corruption on the part of members of the Judiciary were not within the jurisdiction of the hearing ordered by the said purported orders to be conducted by Mr.Justice Baker.

14. I deny each and every allegation contained in Paragraphs Sixth and Seventh, except admit that on January 23, and January 24, 1964, I appeared as a witness before the Honorable Edward G. Baker.

15. I deny each and every allegation contained in Paragraph Eighth (a), (b), (c), (d), (e), (f), (g), except that I admit that prior to March, 1964, I had been retained as attorney for Fun Fair Park, Inc.

16. I deny each and every allegation contained in Paragraphs Ninth and Eleventh, and I deny knowledge or information sufficient to form a belief as to Paragraphs Tenth and Twelfth.

17. The opinion of the Court resulting in the order of disbarment apparently assumes to make certain findings; this would appear from the paragraph on the last page of the opinion, beginning with the words,

> "When an Attorney makes baseless written charges against members of the Judiciary * * *."

18. While this is the first of the conclusions enumerated by the Court, no such specification of charge appears in the petition; and if it is based on a conclusion of Mr. Justice Baker, it could not be validly used; for he stated many times during the course of his inquiry that the making of charges against a member of the judiciary was not before him; and it is the fact that my clients made certain factual, not conclusory, charges.

19. To this day I have received no notice of any charge against me that I made a baseless charge against a member of the judiciary; it is the fact that every such charge made by my clients had its roots in the record of proceedings; the fact that no such charge was made against me was noted by the New York Law Journal in its front page of July 21, 1965 when it corrected its headnote to the opinion in this case on the front page of July 12, 1965; a copy of the correction is annexed hereto and made a part hereof.

20. The charges of contumacious refusal to testify and of advising a client not to testify for the purpose of delaying and misleading the Court and of wilfully failing to appear are, I submit, proven of no merit and without substance by the very record of the Judicial Inquiry out of which they purport to grow, to the extent that I have been able to read that record.

21. The charge of fraudulently using the name of another attorney without his knowledge or authorization is, I respectfully submit equally without merit, and that charge, too, is destroyed by the very record before Mr. Justice Baker.

22. The charges of unlawfully soliciting legal business, impairing the relationship of attorney and client and communicating with an adverse party in litigation are so devoid of merit as to border on the ludicrous, did they not result in such tragic consequences to me; it is the fact, and the record before Mr. Justice Baker proves it, that a person sought me out and disclosed to me, abuse he was receiving from

his own attorneys who, he charged, were engaged in an unlawful conspiracy to destroy my client, Ursini; even before he sought me out, he announced in open court, before Mr. Justice Benjamin, his desire to have me as his attorney in place and in stead of the attorneys he believed to be destroying him.

23. The charge of undertaking to serve as attorney for both sides in a bankruptcy proceeding was fully heard before Chief Judge Zavatt of the United States District Court for the Eastern District of New York; hearings were held on April 1, 2, and 21, 1964, which resulted in 575 pages of transcript; those hearings revealed that I was under an obligation to disclose to creditors of Fun Fair Park, Inc. that fraud was being perpetrated upon them by my client's adversaries and the Chief Judge of the District Court considered that very charge as part of the proceedings before him, and cleared me as therein appears.

24. I have previously brought to this Court's attention, by letter dated January 22, 1965, that staff counsel had taken a particularly unobjective attitude in this proceeding and were apparently in close collaboration with my clients' adversaries; the charge involving the bankruptcy proceeding is probably most illustrative of the lack of objectivity and, possibly, animus which moves these public officials; it finds no roots in any matter referred to or appearing before Mr. Justice Baker, or in the evidence and exhibits presented before the Additional Special Term, Kings County, on in any other aspect of the proceeding established by order of this Court, dated December 19, 1962; since Paragraph First of the petition alleges these orders to be the sources of petitioner's powers and duties and the orders and proceedings do not give rise to such a charge, staff

counsel must have taken it upon themselves to seek other sources for the charges in violation of their orders.

25. In any event, all of the above matters should be fully explored upon a trial conducted by the Court or by an impartial referee.

> "Ordinarily, upon charges and an answer, a reference is ordered to ascertain and report the facts." (In re Stern, 137 App. Div. 909, 121 N.Y.S. 943, First Dept., 1911).

26. In a similar situation, In Re Broome, 10 N.Y. 2d 942, 224 N.Y.S. 2d 21, where a disciplinary proceeding was brought against an attorney in this Department, the issues were referred to a special referee for hearing and report; the attorney moved that the referee disqualify himself on the ground of prejudice; the referee denied the motion and the attorney declined to participate further in the hearings.

27. The Court of Appeals did not specifically pass on whether the attorney would have waived his objection if he had continued before the referee, but reversed the order of disbarment and stated that a new hearing should be granted at which the attorney might have an opportunity to present proof.

28. So, in the case at bar, it is the sense of our system of justice that an opportunity for a hearing be afforded every person, even the lowest; I say to the Court with all the candor and honesty which I can muster that it was my belief that the court would treat my "Plea in Bar and Demurrer" as a motion to dismiss, such as the ones permitted by Rule 3211 of the Civil Practice Law and Rules; then under these circumstances, it might have permitted evidence under subdivision (c) of that rule; and my time to plead with a more formal answer would have

been extended until ten days after service of notice of entry of an order denying my motion, under subdivision (f); that this understanding on my part had a basis in fact appears from the letter of the presiding Justice, the Hon. George J. Boldock, on November 14, 1963, wherein he stated that all applications to the Court with respect to the proceedings instituted by the order of October 9, 1963 as amended by order entered October 30, 1963 must comply with the applicable provisions of the Civil Practice Law and Rules.

29. In In Re Crittendon, 280 N.Y. 492, a disbarred lawyer claimed that if afforded an opportunity he could refute conclusions drawn from a consideration of an agreement which was not entered in evidence in the proceedings, and which appellant, therefore, did not have an opportunity to meet or to explain; the Court of Appeals reversed the order of disbarment and directed that the matter be remitted to the Appellate Division for further proceedings, thus permitting the attorney to have his day in Court.

30. It has been my position throughout the entire proceedings, which began with the original demand for an investigation initiated by my clients, that I have been in a position similar to that described by Judge Finch in Matter of Eldridge, 82 N.Y. 161, 167, where, speaking of an attorney who had been disbarred, he said for the unanimous Court of Appeals:

> "The issue is vital to the party assailed. An adverse decision dooms him always to disgrace, and often to poverty and want. His professional life is full of adversaries. Always in front of him there is an antagonist, sometimes angry and occasionally bitter and venomous. His duties are delicate and responsible, and easily subject to misconstruction. To say that when he denies the

charges brought against him he may be tried without the rights and the safeguards which belong to the humblest criminal, would be to adopt a dangerous rule, and one without reason or justification."

31. The adversaries against me in the Fun Fair litigation, out of which these charges arise, were bitter and venomous and allied with an estranged and vindictive brother of mine; an order of disbarment resulting from their inspiration and testimony in a non-adversary inquiry can only add to the injustice which has pervaded all the proceedings involving that hapless company.

32. Yet, out of all of the litigation I conducted for that company, involving virtually mountains of affidavits, and thousands of hours of testimony, there is not a single charge, as indeed there could not be, that I made a single false statement or submitted a single false affidavit.

33. I have stated the facts of this matter and of my defenses to the charges and the grounds for my plea in bar and demurrer to Charles Haydon, Esq., 52 Broadway, New York, New York, and he has researched the law and stated to me that he believes I have a valid defense to the charges in this case; I respectfully request an opportunity to meet those charges.

34. I have proceeded by order to show cause because the relief involved requests that the Court treat with an order heretofore made and entered, to wit, the order of disbarment; that no previous application for the relief here sought has heretofore been made.

WHEREFORE, I respectfully pray that the order of

disbarment be vacated, and that the matter be referred to an impartial referee for hearing.

s/ William Robert Klein
WILLIAM ROBERT KLEIN

Sworn to before me this
30th day of July, 1965.

[illegible]
[illegible] New York County
Notary [illegible] Expires March 30, 1967

A - 342

WILLIAM ROBERT KLEIN
132 West 43rd St.
New York City
Br-9-9346

July 16,1965

Hon.Mark F.Hughes
President,N.Y.County
Lawyers Association
No.1 Chase Manhattan Plaza
New York City

Re:Abrupt Order of
Disbarment
(NYLJ 7-12-65)

Dear Mr. Hughes,

Your prompt and kind referral of the writer,to your Association's Chairman of its Committee on Discipline,Samuel Ballin, Esq.,for consideration of policy matters, inherent in the above matter, and as such, of interest to your Association,was followed by his equally prompt and attentive reception of their presentation.

We both quickly agreed that the subject, in its present"final" state, was not for his Committee;but that if, for example,upon an appeal,or as in our contemplation,upon a motion to vacate said "final order" as a legal nullity,addressed to the Second Department,with requested restoration of the matter to the calendar,first for opportunity to submit upon Points of Law and Fact,in support of a motion, duly made,and addressed to Plea in Bar and Demurrer, and failing thereon,to serve and file Answer to the merits in regular normal practise under the CPA and CPLR,within a fixed further time, your Association or in coordination with the Bar Association of the First Department,might function,in the role of amicus curiae, that would be a policy area beyond his province.

The First Department is directly involved,because,as will be seen, on closer study,the subject-matter of the charges alleged against the respondent-attorney,and the findings of "guilt",without prior notice thereof,or hearing or reference or trial,had already been deposited and filed in the Grievance Committee of the Assn. of the Bar of the City of New York,and issue joined thereon by duly filed Answer,long prior to institution of proceedings in Second Dept. Only when respondent's clients,at Court,finally adduced evidence of the actual passing of some $5000 in cash,naming persons, to influence the course of justice,in the pending litigation,(involving a stake of million-and-half dollar equity)did the Second Dept. make "raid" on,or a "grab"for jurisdiction,where the matter,it may well be demonstrated,was known not to belong.

As the matter now stands,there is a complete void of due process,- by all standards,long known to prevail for disciplinary cases,and known to be accorded to the lowliest criminal. The hearing process, standing denied in the 2nd Dept., may well be had on the original complaint in the First Dept.

Such hearing can be had, perhaps while the 2nd Dept. order's enforcement may be stayed and deemed stayed; that is for the future.

The broad policy considerations, presented to Mr. Ballin, follow:

(a) Whether to achieve local ends, themselves evidently illegal, an existing, duly vested, joined issue may be, without notice, to Association or respondent, abruptly appropriated to another Department.

(b) Whether an immunity from Inquiry of serious, formulated charges against a member of the Judiciary may be effected, by the process of counter-charging the attorney for the complainants, and thus discrediting the complaint, made pursuant to requirement of Canon #1 of the Code of Professional Ethics, including another injunction upon a lawyer not to avoid his obligation to client by "currying favor with the Court"; and further made pursuant to statutory invitation to deposit with the Administrative Board of State of New York, (Art. 7a Judiciary Law, Sections 212, 3) all "complaints, criticisms and recommendations" affecting the administration of justice.

(c) Whether a Bar Association, first dedicated to protection of the Bar, against assault from within or without its ranks including any demeaning Bench, -seeing a member's professional life stripped bare, having previously earned from that Bench, only highest commendation for professional dedication, - in the broad interest of the Barand its members, thus threatened as a whole in its security of tenure, can afford to avoid participation as amicus curiae, to assist in restoration of due process.

A voice of the Bar has been stilled, while in the process of striving with judicially acknowledged display of "superb intellectual integrity". At the Democratic Convention in 1960, the lonely voice of Sen. Eugene Mc Carthy was raised in behalf of the now deceased Adlai Stevenson, in words which are here adapted; and I pray, that the Associations

"Do not reject this cause, which should make us all proud to be lawyers."

In such a cause, I have found myself enlisted, by an unforeseeable course of events, following directly only from performance of duty.

Gratefully yours,

William M. Klein

k.t

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7/12/65 NYLJ

New

VOLUME 154—NO. 7.

APPELLATE DIVISION

Second Department

ATTORNEYS – DISCIPLINARY PROCEEDING

In a disciplinary proceeding it was alleged, and was not denied, that the respondent made baseless written charges of corruption against judges and attorneys, that he contumaciously refused to testify concerning these charges at a judicial inquiry directed by the Appellate Division, that he obstructed and impeded the inquiry by willfully failing to appear as a witness and by advising a client not to testify, that he fraudulently used another attorney's name in a third-party summons and complaint, that he solicited legal business from a client of other attorneys in an action, seeking to induce the client to discharge the adverse party in an action without the consent or knowledge of the party's attorney, and that after being retained for a corporation he aided in the preparation and filing of a petition in bankruptcy against the corporation and gave the creditors legal advice and then appeared as attorney for the alleged bankrupt and filed an answer in which he denied allegations in the petition that were based on information he had furnished. The respondent is disbarred.

In the matter of WILLIAM ROBERT KLEIN, an attorney; SOLOMON A. KLEIN, petitioner; WILLIAM R. KLEIN, respondent.

Park, Inc., v. Ursini. The charges were found to be baseless. The justice presiding at the Additional Special Term of the Supreme Court, Kings County, before whom such inquiry was conducted, found that respondent was guilty of making baseless charges against the judges and attorneys and of other misconduct.

On December 17, 1964, this disciplinary proceeding was instituted against respondent. The petition alleged that respondent was guilty of the following misconduct:

(a) He contumaciously refused to answer questions as a witness on January 23 and 24, 1964, at the Additional Special Term of the Supreme Court, Kings County, in violation of his duty as a member of the legal profession, and defied the authority of the court to inquire into information within respondent's knowledge relating to the charges of respondent and his clients with respect to the alleged misconduct and corruption on the part of members of the judiciary and members of the Bar, and relating to his conduct as a lawyer, and thereby hindered and impeded the judicial inquiry directed by this court;

(b) He contumaciously obstructed and impeded the Additional Special Term by willful failure to appear on November 21, 1963, as a witness under subpoena, and by instructing his client (Ursini) to refuse to testify when the client appeared before the Additional Special Term as a witness pursuant to subpoena;

(c) In an action in the Supreme Court, Queens County, he deceived the court and the third-party defendant by falsely stating that he was authorized to appear for the third-party defendant, and did thereby intend, on information and belief, to and did exonerate and relieve this respondent of any disciplinary liability," by reason of which this proceeding is barred; (8) there is now pending and undetermined a proceeding before the Judicial Conference and its Administrative Board, by reason of which this proceeding is barred; (9) respondent was exonerated of all charges and, "by reason of orders made by this court in denial of access to and suppression of the records," this proceeding is barred; (10) this proceeding was maliciously instituted by respondent's adversaries, to defeat the interests of respondent's clients in the pending Fun Fair Park litigation, by reason of which respondent "requests and demands, * * * as is usual in disciplinary proceedings," an adjournment of this proceeding until the determination of the litigation mentioned; and (11) the petition is insufficient to constitute a statement or notice of charges, or to enable him to answer.

After the service of the "answer" and between February 8, 1965, and April 20, 1965, pursuant to authorization of this court to examine the records of the judicial inquiry, the respondent on thirty-two separate days appeared at its office and there examined the minutes, exhibits and records in its possession pertaining to the charges against him.

The aforesaid "objections" in respondent's "answer" are addressed solely to the jurisdiction of this court over respondent's conduct as an attorney. However, the answer does not

(Continued on page 6, column 5).

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A Correction

In the headnote of the opinion of the Appellate Division, Second Department, published on this page July 12, in the Matter of William R. Klein, a disciplinary proceeding, it was stated, among other things, that "it was alleged, and not denied, that the respondent made baseless written charges of corruption against judges and attorneys." In the body of the opinion it is stated that a justice presiding at a "Judicial Inquiry on Professional Conduct" found the respondent guilty of making such baseless charges. But in the court's enumeration of the allegations of the petition in the proceeding it does not appear that the making of such charges was among the matters alleged in the petition.

N.Y.L.J. PAGE 11 7-21-65

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A 345

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 29th day of June, 1965

Present—HON. GEORGE J. BELDOCK, *Presiding Justice.*
" HENRY L. UGHETTA,
" ~~MARCUS G. CHRIST,~~
" ARTHUR D. BRENNAN,
" L. BARRON HILL,
" SAMUEL RABIN,
" ~~JAMES D. HOPKINS,~~
" ~~A. DAVID BENJAMIN,~~
Justices.

In the Matter of William Robert Klein, an attorney.

Solomon A. Klein,
Petitioner;

William Robert Klein,
Respondent.

Order of Disbarment.

A proceeding having been instituted in this court upon the petition of Solomon A. Klein, verified the 16th day of December, 1964, in respect to William Robert Klein, an attorney and counselor at law, admitted to the Bar on January 8, 1928, at a Term of the Appellate Division of the Supreme Court in the First Judicial Department and, after revocation of his license having been re-admitted to the Bar as William R. Klein on January 5, 1955, at a term of the same court, petitioning for an order directing that the respondent, William Robert Klein as an attorney and counselor at law be disciplined upon the charges set forth in said petition, and why such other or further action upon the charges embodied in the petition, as justice may require, should not be had, and for such other and further relief in the premises as may be just and proper; and the respondent having filed an answer, and this court by order dated January 13, 1965 having granted respondent's motion to enlarge time to make motions in said proceeding, and having enlarged his time to the 16th day of February, 1965; and the petitioner having moved by notice of motion, dated May 20, 1965 to discipline said respondent, for the acts of professional misconduct set forth in the above mentioned petition, and the respondent having cross moved by notice of cross motion, dated June 1, 1965 to dismiss the petition and for other relief.

Now on reading and filing the petition verified the 16th day of December, 1964, affidavits of Solomon A. Klein in support of motion to discipline respondent and the answer of respondent and affidavit of William R. Klein in support of cross motion and in opposition to motion to discipline respondent, and all the papers filed herein, and the said motions having been submitted by Mr. Solomon A. Klein, petitioner appearing in person and submitted by Mr. William R. Klein, respondent appearing in person, and upon the per curiam opinion of this court, dated June 29, 1965 heretofore filed and made a part hereof, and due deliberation having been had thereon:

It is Ordered that the petitioner's motion to discipline respondent be and the same hereby is granted; the respondent be and the same hereby is disbarred, effective as of the date of the entry of this order, that is June 29, 1965; and it is further

Ordered that respondent's cross motion to dismiss the petition and for other relief be and the same hereby is denied, and it is further

Ordered that the name of said William Robert Klein(admitted as William R. Klein) be struck from the roll of attorneys and counselors at law in the State of New York, and it is further

Ordered, pursuant to the appropriate provisions of the Judiciary Law of the State of New York, that the said William Robert Klein(admitted as William R. Klein) is hereby commanded to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another, and is forbidden to appear as attorney and counselor at law before any court, judge, justice, board, commission or other public authority or to give to another an opinion as to the law or its application or any advice in relation thereto.

Enter:

John J. Callahan

Clerk

A 347

SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT,
CLERK'S OFFICE, BOROUGH OF BROOKLYN, N. Y.

I, **JOHN J. CALLAHAN,** *Clerk of the Appellate Division of the Supreme Court of the State of New York in the Second Judicial Department, do hereby certify that the foregoing is a copy of the order made by said Court upon the appeal in the above entitled action or proceeding, and entered in my office on the* 29th *day of* June, *196* 5, ~~*and that the original record upon which said appeal was heard is hereto annexed.*~~

In Witness Whereof, *I have hereunto set my hand and affixed the seal of said Court, at the Borough of Brooklyn, this* 30th *day of* JUNE, *196* 5.

John J. Callahan
Clerk.

Supreme Court,
APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

ORDER

A 348

SUPREME COURT, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT.

Beldock, P.J., Ughetta, Brennan, Hill and Rabin, JJ.

In the Matter of WILLIAM ROBERT KLEIN,
an attorney.

SOLOMON A. KLEIN,

Petitioner;

WILLIAM R. KLEIN,

Respondent.

Disciplinary proceeding against respondent, William R. Klein, an attorney, instituted by Solomon A. Klein as petitioner. Respondent was admitted to the Bar on January 8, 1928, at a term of the Appellate Division of the Supreme Court in the First Judicial Department; and, after revocation of his license (242 App. Div. 494, lv. to app. den. 270 N. Y. 675; see also 265 App. Div. 934), he was re-admitted to the Bar on January 5, 1955, at a term of the same court.

Solomon A. Klein, petitioner pro se.

William Robert Klein, respondent pro se.

PER CURIAM. After certification by the State Board of Law Examiners on September 22, 1922, respondent's application for admission to the Bar was rejected by the Committee on Character and Fitness for the First Judicial District on October 18, 1923 and again on May 28, 1925. A petition for rehearing was denied in May, 1926, but a third petition for rehearing was granted in November, 1927. On December 17, 1927

respondent was approved by the Character Committee, and on January 8, 1928 was admitted to the Bar by the Appellate Division, First Department.

Thereafter, in a proceeding instituted by the Association of the Bar of the City of New York, hearings were held before an Official Referee who, on February 5, 1934, reported that respondent had made fraudulent representations and concealments before the Committee on Character and Fitness duly appointed by the court in connection with his original application for admission to the Bar. The findings of the Official Referee were sustained, and on December 7, 1934 respondent's license to practice law was revoked (242 App. Div. 494, lv. to app. den. 270 N. Y. 675). Applications for vacatur of the order of revocation were denied on May 28, 1937 and on December 30, 1942 (265 App. Div. 934).

On May 13, 1953 the respondent made application to the Appellate Division, First Department, for leave to appear before its Committee on Character and Fitness as an applicant for admission to the Bar. The court denied this motion without prejudice to a reapplication in the event respondent again took and passed the Bar examinations. After again passing the Bar examinations, respondent was admitted to the Bar on January 5, 1955 by the said Appellate Division.

By orders made in October, 1963 this court directed the Judicial Inquiry on Professional Conduct in Kings County to inquire into and report with respect to written charges made by respondent and his clients (Ursini) of alleged corruption on the part of various Justices of the Supreme Court in the Second Judicial Department and by two attorneys in connection with

an action in the Supreme Court, Queens County, entitled Fun Fair Park, Inc. v. Ursini. The charges were found to be baseless. The Justice presiding at the Additional Special Term of the Supreme Court, Kings County, before whom such inquiry was conducted, found that respondent was guilty of baseless charges against the judges and attorneys and of other misconduct.

On December 17, 1964 this disciplinary proceeding was instituted against respondent. The petition alleged that respondent was guilty of the following misconduct:

(a) He contumaciously refused to answer questions as a witness on January 23 and 24, 1964, at the Additional Special Term of the Supreme Court, Kings County, in violation of his duty as a member of the legal profession, and defied the authority of the court to inquire into information within respondent's knowledge relating to the charges of respondent and his clients with respect to the alleged misconduct and corruption on the part of members of the judiciary and members of the Bar, and relating to his conduct as a lawyer, and thereby hindered and impeded the judicial inquiry directed by this court;

(b) He contumaciously obstructed and impeded the Additional Special Term by wilful failure to appear on November 21, 1963 as a witness under subpoena, and by instructing his client (Ursini) to refuse to testify when the client appeared before the Additional Special Term as a witness pursuant to subpoena;

(c) In an action in the Supreme Court, Queens County, he deceived the court and the third-party defendant by

preparing and serving a third-party summons and complaint in the name of an attorney of record for the third-party plaintiff, when in fact the said attorney had not been retained by the third-party plaintiff to prosecute the action and respondent's use of such attorney's name was without the attorney's knowledge or consent;

(d) In October, 1960 respondent solicited legal business from the client of other attorneys in a pending lawsuit and attempted to induce such client to discharge such other attorneys and to retain respondent instead;

(e) In October, 1961 respondent solicited legal business for another attorney;

(f) In October, 1961, without the knowledge or consent of the attorneys for an adverse party in a pending litigation, respondent communicated with such adverse party; and

(g) Despite the fact that respondent had already been retained as attorney for Fun Fair Park, Inc., thereafter, in March, 1964, he aided in the preparation and filing of a petition by creditors in an involuntary bankruptcy proceeding against said Fun Fair Park, Inc. in the United States District Court for the Eastern District of New York; he gave the creditors legal advice, and prepared papers for execution and filing by such creditors. Thereafter respondent appeared in said bankruptcy proceeding as attorney for the alleged bankrupt and filed an answer to the creditors' petition, denying allegations thereof, which were based upon information furnished by him.

On January 6, 1965 respondent filed an answer in which he alleged "in Bar and Demurrer" that: (1) this court lacks

jurisdiction over the subject matter and the person of respondent; (2) the proceeding is in deprivation of his constitutional rights; (3) this court is without authority to initiate or prosecute charges against him; (4) this court should withdraw and transfer the proceedings to another "equal jurisdiction"; (5) there is now pending and undetermined another proceeding at the Bar Association of the City of New York, "of which the present proceeding is in substantial if not complete duplication" which is a bar to the present proceeding; (6) the orders of this court authorizing this proceeding were based on the unlawful and improper appropriation of confidential and privileged communications from him "addressed to and belonging to State Agencies and the Office of the Governor of the State of New York", and were in "violation of the public policy of the State", by reason of which the proceeding is barred; (7) this court "did * * * terminate" the proceeding before the service of the order to show cause "and upon prior recorded assurances given duly to respondent and others, that no charges were or would be considered or entertained against this respondent, and did thereby intend, on information and belief, to and did exonerate and relieve this respondent of any disciplinary liability", by reason of which this proceeding is barred; (8) there is now pending and undetermined a proceeding before the Judicial Conference and its Administrative Board, by reason of which this proceeding is barred; (9) respondent was exonerated of all charges and, "by reason of orders made by this Court in denial of access to and suppression of the records", this proceeding is barred; (10) this proceeding was maliciously instituted by respondent's adversaries, to defeat the interests

of respondent's clients in the pending Fun Fair Park litigation, by reason of which respondent "requests and demands, * * * as is usual in disciplinary proceedings", an adjournment of this proceeding until the determination of the litigation mentioned; and (11) the petition is insufficient to constitute a statement or notice of charges, or to enable him to answer.

After the service of the "answer" and between February 8, 1965 and April 29, 1965, pursuant to authorization of this court to examine the records of the Judicial Inquiry, the respondent on thirty-two separate days appeared at its office and there examined the minutes, exhibits and records in its possession pertaining to the charges against him.

The aforesaid "objections" in respondent's "answer" are addressed solely to the jurisdiction of this court over respondent's conduct as an attorney. However, the answer does not contain a single denial by him of any of the factual allegations of the petition.

Respondent's claim that this court lacks jurisdiction to discipline him by reason of his admission, residence and maintenance of an office in the First Judicial Department, is without merit. The petition for discipline sets forth numerous acts of misconduct on the part of respondent committed in this Department; his contumacious conduct before, and his obstruction of, the Judicial Inquiry in this Department, and other acts of misconduct in litigation in this Department and in the courts thereof.

None of the "objections" alleged in respondent's answer has merit. None of the charges in the petition for discipline has been denied in fact by respondent.

When an attorney makes baseless written charges against members of the Judiciary and members of the Bar; is guilty of contumacious conduct in refusing to testify after subpoena with respect to those charges; advises his client, duly subpoenaed, to refuse to testify when called before a court of inquiry under direction of this court; when he hinders, impedes, and obstructs a judicial inquiry directed by this court; when he fraudulently uses the name of another attorney in litigation without the knowledge or authorization of said attorney; when he unlawfully solicits legal business and seeks to interfere with and impair the relationship of client and attorney; when he communicates with an adverse party in litigation knowing that such adverse party had appeared and was represented by other counsel, without the knowledge or consent of the other counsel; and when he undertakes to serve as attorney for both sides in a bankruptcy proceeding pending in court and then takes contrary and inconsistent positions on both sides, he demonstrates such lack of character and fitness as to require his disbarment.

Motion of petitioner to discipline respondent granted; and the respondent is disbarred, effective as of the date of the entry of the order hereon.

Respondent's cross motion to dismiss the petition and for other relief denied.

BELDOCK, P.J., UGHETTA, BRENNAN, HILL and RABIN, JJ., concur.

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND JUDICIAL DEPARTMENT
- x

In the Matter of WILLIAN ROBERT KLEIN, an Attorney

SOLOMON A. KLEIN,

Petitioner

WILLIAM ROBERT KLEIN,

Attorney-Respondent.

- x

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of Solomon A. Klein, sworn to May 20, 1965, the petition of Solomon A. Klein, verified December 16, 1964, the order of Honorable George J. Beldock, Presiding Justice of this Court, made December 17, 1964, directing the respondent to show cause why he should not be disciplined upon the charges set forth in the aforesaid petition, and the answer of respondent dated January 6, 1965 filed with this Court, the undersigned will move this Court at a term appointed to be held on May 28, 1965 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at the Courthouse, 45 Monroe Place, Borough of Brooklyn, City and State of New York, for an order imposing such discipline upon respondent as this Court may deem just and proper.

Returnable 5/28/65

Dated: Brooklyn, New York,
May 20, 1965.

Dated 5/20/65

Yours, etc.,

SOLOMON A. KLEIN
Petitioner, Pro Se
Room 403, Borough Hall Building
Brooklyn 1, New York

TO:

WILLIAM ROBERT KLEIN, ESQ.
Respondent, Pro Se

"Exh. K"

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND JUDICIAL DEPARTMENT

In the Matter of WILLIAM ROBERT KLEIN, an Attorney

SOLOMON A. KLEIN,

Petitioner

WILLIAM ROBERT KLEIN,

Attorney-Respondent.

STATE OF NEW YORK }
COUNTY OF KINGS } ss.:

SOLOMON A. KLEIN, being duly sworn, deposes and says:

1. I am the petitioner in the above-entitled proceeding having been designated to institute disciplinary proceedings by order of this Court made and filed November 23, 1964.

2. On December 17, 1964 respondent was personally served with an order made by Honorable George J. Beldock, Presiding Justice of this Court, directing respondent to show cause why he should not be disciplined upon the charges set forth in the petition thereto annexed. The order to show cause was returnable before this Court on January 4, 1965.

3. On or about January 6, 1965 respondent filed an answer. His answer does not deny any of the allegations of misconduct contained in the petition. Nor does it raise any triable issue of fact. In substance, the answer challenges the jurisdiction of this Court, asserts an unspecified deprivation of constitutional rights, seeks the transfer of this proceeding "to another equal jurisdiction" and alleges "the petition on its face is insufficient to constitute a statement or notice of charges, as required

by law, or to enable respondent to make or answer thereto."

4. On January 13, 1965 a further order of this Court granted respondent an enlargement of time to February 16, 1965 for the purpose of making such motions as he may be advised.

5. On February 15, 1965 petitioner received by mail a copy of a paper dated February 13, 1965 in which respondent

> "hereby moves, and will move for a final order of dismissal of the within proceeding, and in any event, for a transfer as also recited in the said pleading of this proceeding, if necessary, without prejudice at the Courthouse herein, at 45 Monroe Place, Boro of Brooklyn, N.Y., at the next regular Motion Day herein, after the determination of the aforesaid applications dated Febru[illegible] 1965 and ante."

It may be noted that this purpo[illegible] motion fails to comply with the rules of practice in that no date for the hearing of the same by this Court is set forth.

6. It should be further noted that by direction of this Court, the Judicial Inquiry on Professional Conduct made available to respondent at its office the minutes, exhibits and records in the possession of the Judicial Inquiry pertinent to the charges. Pursuant thereto respondent between February 8, 1965 and April 29, 1965 appeared at the office of the Judicial Inquiry and there examined such minutes, exhibits and records on 32 separate days. On April 29, 1965 there was delivered to respondent a letter of the Judicial Inquiry notifying respondent that he was required to end his examination of Judicial Inquiry records on April 30, 1965.

7. Since respondent has not denied any of the charges of professional misconduct, specifically alleged in the petition, the allegations of misconduct contained in paragraph "EIGHTH" of the petition stand admitted.

The respondent's time within which to make proper motions expired February 16, 1965 and he has made no motion

addressed to the petition in a form cognizable under the procedures of this Court.

WHEREFORE, petitioner respectfully moves that an order be made herein imposing such discipline upon respondent as this Court may deem fit and proper.

Sworn to before me this
20th day of May, 1965.

Solomon A. Klein

KENNETH L. LAWLOR
Notary Public, State of New York
No. 30-2275375
Qualified in Nassau County
Term Expires March 30, 1967

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APPELLATE DIVISION::SUPREME COURT
SECOND JUDICIAL DEPARTMENT

In the Matter of

WILLIAM ROBERT KLEIN,

Attorney-respondent

SIR:

PLEASE TAKE NOTICE that, upon the pleading of the respondent dated February 6,1965,heretofore served and filed herein,in Demurrer and Bar of the within proceeding,and the enumerated grounds recited therein for such relief,and upon the prior applications of respondent as Petitioner and co-petitioners so entitled therein,made in and to the Judicial Conference,and the Administrative Board,of the State of New York, for related relief anterior hereto,and duly served upon your Office,in Judicial Inquiry on Professional Conduct,dated February 10,1965 and ante,and duly served upon the Court herein respectively by its duly authorised and designated representative for receiving such service, to wit, the Departmental Director of Judicial Administration for the Second Department,the Undersigned hereby moves,and will move for a final order of dismissal of the within proceeding,and in any event, for a transfer as also recited in the said pleading of this proceeding,if necessary,without prejudice at the Courthouse herein,at 45 Monroe Place, Boro of Brooklyn, N.Y., at a next regular Motion Day herein,after the determination of the aforesaid applications dated February 10,1965 and ante.

Dated New York,February 13,1965

Yours etc.,

WILLIAM R. KLEIN
Respondent pro se
O.& P.O.Address
745 Fifth Avenue,
Boro of Manhattan,
City of New York
(ha-1-7795
pl-9-5653)

TO:

Solomon A, Klein,
Attorney for Petitioner.

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Supreme Court Appellate Division
Second Judicial Department
45 MONROE PLACE
BROOKLYN 1, N. Y.

JOHN J. CALLAHAN
CLERK

February 4, 1965

William Robert Klein, Esq.
745 Fifth Avenue
New York, N. Y.

Re: Judicial Inquiry Proceeding against
William Robert Klein

Dear Sir:

This will acknowledge receipt of your letters dated respectively January 22, 1965 and January 29, 1965 addressed to the Presiding Justice. In your first letter you complain about the fact that certain records are not being made available to you by the Judicial Inquiry. In your second letter you request an enlargement of time within which to make your motions in this proceeding.

The court has considered both your letters. The court has decided not to extend your time any further for the making of motions. However, with regard to your request for the examination of further records of the Judicial Inquiry, the court has directed the Judicial Inquiry to make available to you for your inspection at its office all the exhibits, minutes and records in its possession relating to you. You can arrange to examine such exhibits, minutes, etc. immediately if you will go over to the office of the Judicial Inquiry and see Mr. Lawler or Mr. Sol A. Klein.

Very truly yours,

John J. Callahan

JOHN J. CALLAHAN
Clerk

HMP:ad
cc: Solomon A. Klein, Esq.
Judicial Inquiry on Professional Conduct
Room 404, Borough Hall Building
Brooklyn, New York

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Judicial Inquiry
Supreme Court, Kings County
BOROUGH HALL
BROOKLYN 1, N. Y.
MAIN 4-7851

SOLOMON A. KLEIN
CHIEF COUNSEL
KENNETH L. LAWLOR
ASSISTANT COUNSEL

January 18, 1965

William Robert Klein, Esq.
745 Fifth Avenue
New York City, New York

Dear Sir: Re: Matter of William Robert Klein, an Attorney.

We are in receipt of your letter of January 15, 1965. As to the first paragraph of your letter:

(1. We are enclosing herewith a certified copy of the order of the Appellate Division made and filed November 23, 1964;

(2. You may inspect at this office the order of this Court made December 19, 1962 and the amending order made October 9, 1963 referred to in paragraph Second of the petition;

(3. We decline to furnish the evidence in our possession relating to the allegations set forth in paragraphs Sixth, Seventh and Eighth of the petition. The records of the United States District Court, Eastern District, referred to in paragraph Eighth (g) are in the possession of the Clerk of that Court;

(4. The report of Honorable Edward G. Baker dated November 6, 1964 filed with the Appellate Division is a confidential report and is not available for your inspection. This confidential report is not evidence in the disciplinary pro-

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ceeding pending against you and does not form any part of the record upon which the Court may impose discipline.

Concerning the third paragraph of your letter we do not have possession of the minutes in the Fun Hair litigation, Supreme Court, Queens County, Index No. 2903/1960 nor do we have possession of the files in that action.

Very truly yours,

Kenneth L. Lawlor

KLL:jc

vdc

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At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 13th day of January 1965.

Present—HON. GEORGE J. BELDOCK, *Presiding Justice*
" [illegible]
" [illegible]
" MARCUS G. CHRIST,
" [illegible]
" L. BARRON HILL,
" SAMUEL RABIN,
" [illegible]
" [illegible]

(4) *Justices.*

A Dave Berger appeared in person & filed papers therein

In the Matter of William Robert Klein, an attorney.

Solomon A. Klein,
Petitioner,
v.
William Robert Klein,
Respondent.

Order on motion for an enlargment of time to make motions.

x'ed out!! for Ct. of Appeals!!

A proceeding having been instituted in this court upon the petition of Solomon A. Klein, verified the 16th day of December, 1964, in respect to William Robert Klein, an attorney and counselor at law admitted by the Appellate Division, Supreme Court, First Judicial Department, on January 5, 1955, under the name of William R. Klein, petitioning for an order directing that the respondent, William Robert Klein (admitted as William R. Klein), as an attorney and counselor at law be disciplined upon the charges set forth in said petition, and why such other or further action upon the charges embodied in the petition, as justice may require, should not be had, and for such other and further relief in the premises as may be just and proper, and the respondent having filed an answering affidavit, and having moved for an enlargment of time to make motions in the proceeding, and the said proceeding having come on to be heard by an order to show cause dated December 17, 1964.

Now on reading and filing said order to show cause, the petition of Solomon A. Klein, the affidavit of service of Kenneth L. Lawler, the answering affidavit of respondent, the petition of John R. Grant, and all the papers filed herein, and the matter having been submitted by Mr. Solomon A. Klein, petitioner in person, and submitted by Mr. William R. Klein, respondent in person, and due deliberation having been had thereon:

It is Ordered that the application by respondent for an enlargement of time to make motions in the proceeding, be and the same hereby is granted, and respondent's time enlarged to February 16, 1965 for the purpose of making such motions as he may be advised.

Enter:

John [illegible]

Clerk.

Kelleher I.O. PERM

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SUPREME COURT : APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

- x

In the Matter of :

WILLIAM ROBERT KLEIN :

Attorney-Respondent :

- x

d/1-6-61

The Respondent, above named, having been ordered "to show cause before this Court ** why ** the respondent should *not be disciplined upon the charges set forth * "and why such other * action upon the charges * as justice may require, should not be had", answering thereto and in bar of any proceeding by this Court, alleges and sets forth as follows:

See WK affidavit "Grounds in Answer and Law"

(a) That this Court lacks jurisdiction over the subject matter and the person of the respondent.

See Rule 11 — Non-Waivable

(b) That this proceeding constitutes and is in deprivation of respondent's constitutional rights.

(c) That this Court is without authority to entertain, produce or prosecute or initiate prosecution of any charges against this respondent, as alleged in the Petition.

(d) That this Court, and its Judges, servants, agents, should not participate in or be in any wise party to these proceedings and should withdraw, and allow transfer thereof to another equal jurisdiction, in the light of the past history hereof.

Waivable

(e) That there is now pending and undetermined another proceeding, instituted on or about March, [illegible] of which the present proceeding is in substantial if not complete duplication, and initiated by the same persons or parties complainant in fact and in effect, at the Bar Association of the City of New York, having jurisdiction over the person of this respondent

"Exh. I"

in all respects, in bar hereof.

(f) That the basic orders of this Court, issued in authorization of this proceeding, were based upon the appropriation of confidential and privileged letters, papers and documents, addressed to and belonging to State Agencies and the Office of the Governor of the State of New York, pursuant to the laws and statutes, and pursuant to which they were in confidence so addressed, and as such constituted a violation of the public policy of this State, and by reason thereof, this proceeding stands barred.

(g) That this Court, by its orders subsequent, did effectually and substantially terminate the proceedings, out of which the present charges stem, long before the service of the within order to show cause, and upon prior recorded assurances given duly to respondent and others, that no charges were or would be considered or entertained against this respondent, and did thereby intend, on information and belief, to, and did exonerate and relieve this respondent of any disciplinary liability herein, barring this proceeding.

(h) That there is now pending an adversary proceeding, undetermined, before the ~~Administrative Board of the~~ Judicial Conference of the State of New York, wherein respondent and his clients are and stand opposed to the Judges of this Court, as matter of law, and same must take precedence of this proceeding and constitute a bar hereof and until same is finally determined and disposed of.

(i) That within the knowledge of this Court and its members, each and every matter raised by the charges alleged, was and became the subject of judicial treatment and disposition at the time of occurrence, and respondent was at such time duly exonerated in fact and in legal effect, by the Judges then

 EXH I

presiding thereover, and also that by reason of orders made by this Court, in denial of access to and suppression of the records made at Court, affecting the same, this proceeding is and stands barred.

Entitle to trial per WK Weinrib Post Retention

(j) That this proceeding has been maliciously instituted on information and belief, and inspired and fostered by respondents' adversaries, working in obvious collaboration with the staff aids of the Judicial Inquiry on Professional Conduct, which Body sponsors this proceeding, and prospectively and currently has been and is being utilized to defeat the interest of clients in pending litigation, of all-engaging character, involving perhaps two million dollars; and clients have called upon respondent to obtain adjournment of these proceedings until the determination and adjudication of the said litigation, known as the Fun Fair Park cases, in and for which this Court created an Extraordinary Special Term Part IV Queens County to embrace the said litigation complex, and respondent requests and demands respectfully that as is usual in disciplinary matters, adjournment be had until the determination thereof, in bar of further steps or proceedings herein.

Non-Waivable (Jud 3211(g)7)

(k) That the petition on its face is insufficient to constitute a statement or notice of charges, as required by law, or to enable respondent to make or prepare answer thereto.

Dated New York, January 6, 1965

WILLIAM R. KLEIN
Pro se
O. & P. O. Address
745 Fifth Avenue
Borough of Manhattan
City of New York

County and State of New York : SS.:

WILLIAM R. KLEIN, being duly sworn, deposes and says:

That he is the above named respondent; that he has read the foregoing Answer, and that the same is true except those matters alleged on information and belief and as to those matters he believes it to be true.

Sworn to before me this 6th day of January, 1965

William R. Klein

ROSE SIDELL
Notary Public, State of New York
No. 31-3656098
Qualified in New York County
Comm. Expires March 30, 1965

Exh I

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SUPREME COURT : APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

- x

In the Matter of

WILLIAM ROBERT KLEIN

Attorney-Respondent

- x

COUNTY AND STATE OF NEW YORK : SS.:

WILLIAM R. KLEIN, being duly sworn, deposes and says:

That he is the respondent above named; that he has made the annexed Answer in demurrer and bar to the said proceeding herein, on the basis of facts and documents in his possession.

That he intends to proceed to make appropriate application to the proper tribunal, having jurisdiction as to each of the grounds set forth in the Answer, as soon as possible.

That he has been served with the Order to Show Cause, at a time that the staff aids of the Judicial Inquiry were informed that deponent was heavily engaged in the United States District Court in the Fun Fair litigation, referred to in the answer, in subd. j, and out of which the present proceeding arises, consisting at the time of voluminous motion papers, served by adversaries therein, those named in subd. j,and known to be as therein set out the source and inspiration of the within charges. That was on December 17th, inst. and the holiday season immediately ensuing prevented meeting with prospective counsel. Specifically two attorneys, consulted, each stated and advised that he could not prepare to meet the charges herein, without a considerable period of time, beyond the 4th of January, fixed for Answer, nor could they prepare an answer worthy of the proceeding or to do justice to client.

One counsel, Jacob Rassner, Esq., an attorney of wide experience, addressed the Court, by its Presiding Justice, at the

instance of the Clerk of the Court, after endeavoring in vain to reach the staff Counsel, Sol A. Klein, Esq., away for the holidays, apparently. He asked for sixty days, having just been consulted by deponent, and drew a grant of 2 days for the service and filing of Answer. Begging to be relieved of the responsibility involved, respondent was compelled to be without Counsel and made the annexed verified answer.

No harm can come either to the proceedings, or to the Bar in view of the fact that only most recently, one judicial officer held, sitting in a case being conducted by him, even while his position was diametrically opposite to that of respondent's, that he would always accept respondent's veracity, oath or no oath, in support. And the words of praise forthcoming from deponent's present adversary Justice of this Court, just recently promoted to that high office, in high commendation of a most broad, and all-embracing nature, may here be rendered: (referring to the respondent)

Judge Benjamin: (August 21, 1961)	We commend the real dedication, erudition and tireless * counsel .... "Each of these more than 40 issues have been briefed and argued with philosophical and judicial skill of the utmost intellectual character.
Judge Benjamin:	"I think you are a man of superb intellectual integrity.
Respondent:	"Why do you say that?
Judge Benjamin: (Dec. 24, 1962)	"Because when you are wrong, you quickly admit it, and when you are right, you persevere."
Respondent:	"In which case, I accept that as a compliment."

It is respondent's intention to consult counsel in continuation of this matter, with view to bringing on motions based upon the grounds enumerated, unless this Court will agree to the suspension of this proceeding, pending completion of clients' Fun Fair Litigation.

Sworn to before me this 6th day of January, 1965

ROSE SIDELL, Notary Public, N.Y. State-William R. Klein
No. 31-3656098

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND JUDICIAL DEPARTMENT

In the Matter of

WILLIAM ROBERT KLEIN,

Attorney-Respondent.

Upon reading and filing the annexed petition of SOLOMON A. KLEIN, verified the 16th day of December, 1964, it is

ORDERED, that the respondent, WILLIAM ROBERT KLEIN, show cause before this Court at the Courthouse, 45 Monroe Place, in the Borough of Brooklyn, County of Kings, City and State of New York, on the 4th day of January, 1965 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made herein directing that the respondent WILLIAM ROBERT KLEIN, as an attorney and counselor-at-law, be disciplined upon the charges set forth in the annexed petition, and why such other or further action upon the charges embodied in the annexed petition, as justice may require, should not be had, and for such other and further relief in the premises as may be just and proper.

Returnable 1/4/65

Sufficient reason appearing therefor, it is

ORDERED, that service of a copy of this order and of the annexed petition upon the respondent, on or before 5:00 o'clock P.M., the 22nd day of December, 1964, shall be deemed sufficient.

Dated: Brooklyn, New York
December 17th, 1964.

s/ Lawrence J. Beldock
Presiding Justice
Appellate Division, Supreme Court, Second Judicial Department.

d 1/17/64

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND JUDICIAL DEPARTMENT

- x

In the Matter of

WILLIAM ROBERT KLEIN,

Attorney-Respondent.

- x

TO THE HONORABLE PRESIDING JUSTICE AND JUSTICES OF THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT:

The petition of SOLOMON A. KLEIN, respectfully alleges:

FIRST: That by order of this Court, dated and filed November 23, 1964, petitioner was duly designated and directed to institute in this Court, disciplinary proceedings against the respondent, WILLIAM ROBERT KLEIN, based upon his misconduct as an attorney and counselor-at-law, as set forth in the report of HONORABLE EDWARD G. BAKER, a Justice of the Supreme Court of the State of New York, presiding at the Additional Special Term, Kings County, filed with the Clerk of this Court, dated November 6, 1964, and as indicated in the evidence and exhibits presented before the Additional Special Term, Kings County, or any other evidence that may be available in a proceeding established by order of this Court, dated December 19, 1962, all as more fully hereinafter described.

SECOND: That the said order of November 23, 1964 was duly made and filed by this Court in the proceeding established by the said order of December 19, 1962, as amended by order dated October 9, 1963, which is entitled "In the Matter of the Judicial Inquiry on Professional Conduct" (hereinafter called the "Judicial Inquiry.")

THIRD: Upon information and belief that the respondent, was admitted to practice as an attorney and counselor-at-law in the courts of the State of New York by the Appellate Division of the Supreme Court, State of New York, First Judicial Department, on January 5, 1955, resettled May 31, 1955, and has ever since acted as such attorney and counselor-at-law.

FOURTH: Upon information and belief that the respondent resides in and maintains an office for the practice of law in the County of New York, State of New York and at all the times hereinafter mentioned he has practiced in the Courts of the County of Kings and in other counties within the Second Judicial Department.

FIFTH: That by order of this Court made and filed the 9th day of October, 1963 as amended by order made and filed October 30, 1963 the Judicial Inquiry on Professional Conduct for Kings County, Mr. Justice Edward C. Baker presiding, was directed to take testimony under oath and to file his report setting forth his findings with respect to charges made by respondent and his clients, Frances Ursini and John R. Ursini, of alleged misconduct and corruption on the part of members of the Judiciary and members of the Bar in connection with the litigation in an action entitled, "Fun Fair Park, Inc., et al., v. Frances Ursini, et al."

SIXTH: That on the 23rd day of January, 1964 the respondent appeared as a witness before the Honorable Edward C. Baker, presiding at an Additional Special Term of the Supreme Court, County of Kings, and on said day respondent contumaciously refused to answer proper and relevant questions put to him.

SEVENTH: That on the 24th day of January, 1964, the respondent appeared as a witness before the Honorable Edward G. Baker, presiding at an Additional Special Term of the Supreme Court, County of Kings, and on said day respondent contumaciously refused to answer proper and relevant questions put to him.

EIGHTH: Upon information and belief that the respondent, has been guilty of corrupt, illegal and unethical practices and of professional misconduct and conduct prejudicial to the administration of justice in his office as an attorney and counselor-at-law, in that

(a) Respondent's contumacious refusals to answer questions as a witness on January 23, 1964 and on January 24, 1964 at the Additional Special Term of the Supreme Court, Kings County, violated his inherent duty and obligation as a member of the legal profession and his duty to be candid and frank with the Court; and defied and flouted the authority of the Court to inquire into and elicit information within respondent's knowledge relating to respondent's charges and the charges of his clients Ursini of alleged misconduct and corruption upon the part of members of the Judiciary and members of the Bar, and relating to his conduct and practices as a lawyer. By his contumacious refusals to answer the aforesaid questions the respondent hindered and impeded the Judicial Inquiry directed by this Court into the charges made by respondent and his clients as aforesaid.

(b) That in addition to and wholly apart from respondent's contumacious refusals to testify, respondent wilfully and contumaciously obstructed and impeded the Additional Special Term by a course of conduct deliberately calculated to delay and mislead the Court sitting at such Additional Special Term, by his wilful failure to appear on November 21, 1963 as a witness under subpoena pursuant to the direction of the Justice

presiding at such Additional Special Term, and by instructing his client, John R. Ursini, to refuse to testify as a witness when said John R. Ursini appeared before the Additional Special Term as a witness pursuant to subpoena.

(c) In an action in the Supreme Court, County of Queens, respondent deceived the Court and Lloyd's London, a third-party defendant therein, by preparing and serving a third-party summons and complaint in the name of William Weintraub, as attorney of record for the third-party plaintiff, when in fact William Weintraub had not been retained by third-party plaintiff to prosecute its action and the use of his name as such attorney was without the knowledge or consent of the said William Weintraub.

(d) Respondent in or about October, 1961, solicited legal business of Harry L. Gilman and attempted to induce said Harry L. Gilman to discharge his attorneys in a pending action and to retain respondent in their stead.

(e) Respondent in or about October, 1960, solicited legal business for Robert S. Long, an attorney, and attempted to induce Seville Iron Works, Inc., a corporation, to retain Robert S. Long as their attorney, in the prosecution of an action.

(f) Respondent in or about October, 1961, when appearing for a party in pending litigation communicated upon the subject of the pending controversy with an adverse party to the litigation then represented by counsel without the knowledge or consent of the attorneys for said adverse party.

(g) Prior to March, 1964, respondent had been retained as attorney for Fun Fair Park, Inc. In the period between March 8 and March 18, 1964, respondent aided in the preparation and filing of a petition by creditors in an involuntary bankruptcy proceeding in the District Court of the United States, Eastern District of New York, entitled "In the Matter of Fun Fair Park, Inc., Alleged Bankrupt," and further aided the petitioning creditors in the prosecution of the bankruptcy proceeding by rendering to them legal advice, and by preparing and delivering to such creditors legal papers which were executed and filed by them with the Clerk of said District Court. Following the aforesaid conduct by respondent, he thereafter appeared as attorney for the alleged bankrupt, and filed an answer to the petition of the creditors, denying certain allegations thereof based upon information furnished by him.

NINTH: That the respondent knew or should have known in committing the acts aforesaid, he was violating applicable statut . of the State of New York, the Canons of Professional Ethics by the New York State Bar Association January, 1909, as amended, the Special Rules Regulating the Conduct of Attorneys and Counselors-at-Law in the Second Judicial Department of the Appellate Division of the Supreme Court, and Sections 270-a, 273 and 600 of the Penal Law of the State of New York, and his inherent duty as an attorney and counselor-at-law.

TENTH: That no previous application has been made for the relief herein asked.

ELEVENTH: That the sources of petitioner's knowledge and the grounds of his belief are the facts in evidence set forth in the testimony and exhibits taken and adduced before the Honorable Edward G. Baker in said Judicial Inquiry conducted by

REPORT him and in the said report of Honorable Edward G. Baker filed with the Clerk of this Court and dated November 6, 1964, and the records and minutes in proceedings in the United States District Court, Eastern District of New York, entitled "In the Matter of Fun Fair Park, Inc., Alleged Bankrupt,"

TWELFTH: That an order to show cause is asked for herein, instead of service of a notice of motion, in order that the Court may be fully apprised of the charges made against the respondent in advance of the service thereof upon him, and to enable the Court to fix the return date of the order to show cause all in accordance with the practice observed in such matters.

WHEREFORE, petitioner prays that an order may issue to the respondent, WILLIAM ROBERT KLEIN, directing that he show cause before this Court why an order should not be made herein directing that he be disciplined upon the charges set forth herein, and for such further action as may be contemplated by Section 90 of the Judiciary Law of the State of New York, in accordance with the practice directed to be observed in the disposition of such matters by the courts of this State.

Dated: Brooklyn, New York
December 16, 1964.

S/ Solomon A. Klein

A 377

STATE OF NEW YORK
COUNTY OF KINGS } ss.:

SOLOMON A. KLEIN, being duly sworn, deposes and says:

That he is the petitioner in the within proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Sworn to before me this
16th day of December, 1964.

/s/ Solomon A. Klein

KENNETH I. LAWLOR
Notary Public, State of New York
No. 30-[illegible]

A 378

pl-6-5652

December 11,1964

Hon.Edward Baker,
Presiding Justice,
Judicial Inquiry on
Professional Conduct,
Kings County Courthouse,
Borough Hall, Bklyn., N.Y.

Re:Instituting Orders for
Inquiry Oct.9,30,1964

Honorable Sir:

The Urainis directly,and through counsel,have produced mounting evidence of the use,that their adversary attorneys, Messrs.Gottlieb and Dupont,have made of the "Inquiry" and of its staff counsel, in diverting its course as ordered by the Appellate Division,and your rulings from Bench clearly constituting those two to be in no event complainants under the above Orders.

While apparently, they have had easy entree to the staff,for revival of the recent bankruptcy subject matter, despite its complete treatment on the merits and for any discipline, professional,as against this writer,all having been decided in the writer's favor,the repeated assurance given Uraini and this counsel, that enough evidence had been pointed out of the record itself,as then described, to show "slush fund" availability ,to require further inquiry has not to this writer's knowledge, ever been followed through,now certainly with the sympathetic collaboration with Urainis and the writer, then specifically promised. I realize of course that Your Honor is dependent upon staff for initiation.

Instances of misconduct continue to pile up, as these gentlemen of the Bar are each day hard put to continuing indefensible positions in the continuing Fun Fair Park litigations; the event just reported to Your Honor, affecting Mr.Dupont on December 7,1964 ,-a serious infraction of a lawyer's obligation to the Court, so thoroughly then exposed for all to hear and see,-is but one of many instances since March 11,1958(the day of the withdrawal from use in this Inquiry, by order of the Appellate Division,of the three-year Extraordinary Special Term Part IV Queens (Benjamin J.)records). Many more preceded ,which presumably were ignored by the staff;once again, no collaboration for their adducement was ever brought on by staff.

On September 23, 1964, and on October 2,1964(Nassau County Sup.Ct, Sp.T.Pt.II) and U.S.Dist.Ct., EDNY) respectively,specific reference was placed at the door of Messrs. Gottlieb and his client Lender,to the passing of the sum of $5000, and on Dec.7th, before Mr.Dupont,as disclosed by Lender to his associate and President of Fun Fair Park Inc.,to a named individual,Samuel Reaver, for the corruption of justice,with reference to a County Leader, as so disclosed,in conjunction with the proceedings in that Extra Special Term Part IV. Presumably, Messrs. Dupont and Gottlieb, who have seemed closely to be in direct and frequent contact with staff counsel,have never made any such disclosures to your Inquiry staff, nor shown any interest in making them part of your Inquiry staff efforts.

Sincerely

William [illegible]

LETTER DECEMBER 11, 1964

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department, at the Borough of Brooklyn, on the 23rd day of November, 1964.

PRESENT--HON. GEORGE J. BELDOCK, Presiding Justice,
" HENRY L. UGHETTA,
" PHILIP M. KLEINFELD,
" MARCUS G. CHRIST,
" ARTHUR D. BRENNAN,
Justices.

In the Matter of The Judicial Inquiry on Professional Conduct established by order of the Appellate Division of the Supreme Court, Second Judicial Department, made and filed on December 19, 1962.	Order designating Counsel, etc.

An order having been made by this court on December 19, 1962, establishing a "Judicial Inquiry on Professional Conduct," to receive, investigate and report to this Court, from time to time, all complaints from whatever source received, with respect to attorneys and counselors at law residing in or having their offices in or practicing law in the County of Kings, and assigning Honorable Edward G. Baker, Justice of the Supreme Court to conduct said "Judicial Inquiry on Professional Conduct"; and it appearing that the said Mr. Justice Edward G. Baker has taken testimony, and filed in this court a report dated November 6, 1964, relative to the following attorney:

WILLIAM ROBERT KLEIN

and pursuant to Section 90 of the Judiciary Law, it is

ORDERED, that Solomon A. Klein, Esq., an attorney, is hereby designated and directed to institute in this court disciplinary proceedings against the above named attorney,

A 380

WILLIAM ROBERT KLEIN (admitted 1st Dept. January 9, 1928) based on his misconduct as indicated in the aforesaid report of Mr. Justice Edward G. Baker, and as indicated in the evidence and exhibits adduced in said judicial inquiry and investigation, or any other evidence that may be available, and that such disciplinary proceedings be instituted and prosecuted as soon as may be practicable.

ENTER:

George J. Beldock
Presiding Justice

A 381

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 9th day of March 1964

Present—HON. GEORGE J. BELDOCK, *Presiding Justice.*

" HENRY L. UGHETTA,
" PHILIP M. KLEINFELD,
" [redacted],
" [redacted],
" L. BARRON HILL,
" SAMUEL RABIN,
" [redacted]

Justices.

In the Matter of Proceedings held pursuant to Orders of the Appellate Division, 2nd Department, dated October 9 and 30, 1963, affecting Judicial Inquiry on Professional Conduct.

In the Matter of the Application of

John R. Ursini and Frances Ursini,

for an Investigation of the Facts and Circumstances related to an alleged breakdown of the Administration of Law, Order and Justice, in and for the County of Queens, in relation to litigations (Index No. 2903-1960).

Order on motion to require court files, etc., to be released.

The above-named John R. Ursini and Frances Ursini, petitioners in the proceeding for an Investigation of the Facts and Circumstances related to an alleged breakdown of the Administration of Law, Order and Justice, in and for the County of Queens, in relation to litigations (Index No. 2903-1960), and the said petitioners having moved this court for a direction to require that the court files, records, minutes, etc., in all the litigation out of which this proceeding arose, be released to them for use in this proceeding, by a notice of motion, dated February 17, 1964.

Now on reading and filing the affidavit of William R. Klein in support of said motion and the affidavit of Solomon A. Klein in opposition thereto and all the papers filed herein; and the said motion having been submitted by Mr. William R. Klein of Counsel for petitioners and submitted by Mr. Solomon A. Klein of Counsel to the Judicial Inquiry on Professional Conduct and due deliberation having been had thereon:

It is Ordered that the said motion be and the same hereby is denied in toto.

Enter:

John J. Callahan

Clerk

Received Mar 3-11-64

Friedly Klein & Klein

A 382

Supreme Court Appellate Division
Second Judicial Department
45 MONROE PLACE
BROOKLYN 1, N. Y.

JOHN J. CALLAHAN
CLERK

March 2, 1964

William Robert Klein, Esq.
One Hundred Fifth Avenue
New York, N. Y.

Dear Sir:

Your communication dated February 21, 1964, addressed to the Justices of this Court, was received on February 24, 1964.

In your communication, you request that a Justice be assigned to hold an "extraordinary Special Term, Part IV, for Queens" in place of the Justice who had been assigned by Order No. 19, dated April 4, 1960.

I have been directed to inform you that, after consideration, the Justices of this Court have determined that the assignment you request will not be made.

Very truly yours,

John J. Callahan
Clerk

JJC:WFS:fc

P.S. Your order to show cause, submitted with a letter dated June 26, 1963, and resubmitted with a letter dated January 16, 1964, is returned herewith.

1/22/64

MYLT

3-11/64

By Beldock P.J.; Ughetta, Kleiman, Hill and Rabin, JJ.

MATTER OF URSINI, petition by petitioners to require that certain files, records, minutes, &c. of the litigation out of which the proceeding arose, be released to them for use in this proceeding. Motion denied in toto.

FUN FAIR PARK, INC. v. URSINI, ap (and five other actions) —Motion by appellants to require that various court files, records, minutes, &c., be released for use on the pending appeal. Motion denied in toto.

By Beldock, P.J.; Christ, Brennan

Matter of Ursini—Application by pet. above for an investigation and other equitable relief pursuant to Article 7-A of the Judiciary Law. Motion, in all respects, denied.

A 383

Judicial Inquiry
Supreme Court, Kings County
BOROUGH HALL
BROOKLYN 1, N. Y.
MAIN 4-7881

SOLOMON A. KLEIN
CHIEF COUNSEL
KENNETH L. LAWLOR
ASSISTANT COUNSEL

February 24, 1964

William Robert Klein, Esq.
100 Fifth Avenue
New York, New York

Dear Sir:

Your letter bearing date February 19, 1964 addressed to Mr. Justice Edward G. Baker has been given to us for reply.

By virtue of the order of the Appellate Division, Second Judicial Department, creating the Judicial Inquiry on Professional Conduct, it is required that all matters before this Inquiry be held in strict confidence.

Accordingly, we are not able to grant your request made in the aforementioned letter to Mr. Justice Baker.

Very truly yours,

Kenneth L. Lawlor

KLL:jc

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 20th day of January 196 4.

A 384

Present—HON. GEORGE J. BELDOCK, *Presiding Justice.*

" HENRY L. UGHETTA,
" [illegible]
" [illegible]
" ARTHUR D. BRENNAN,
" [illegible]
" SAMUEL RABIN,
" JAMES D. HOPKINS,

Justices.

In the Matter of the application of John R. Ursini and Frances Ursini,

Petitioners,

for an investigation of the facts and circumstances related to an alleged breakdown of the administration of Law, Order and Justice, in and for the County of Queens, in relation to Litigations.(Index No. 2903-1960 Queens Supreme Court)

Order on application

An application having been made to this court upon the petition of John R. Ursini, verified the 3rd day of December, 1963, for an investigation of the facts and circumstances related to an alleged breakdown of the administration of Law, Order and Justice, in and for the County of Queens, in relation to Litigations (Index No. 2903-1960 Queens Supreme Court) and other omnibus relief, pursuant to article 7-A of the Judiciary Law, by notices of motion, dated January 2, 4, and 13, of 1964.

Now on reading and filing the petition of John R. Ursini and the affidavits of William R. Klein, verified January 4, 1964 and January 13, 1964 and all the papers filed herein, and the said application having been submitted by Mr. William R. Klein, of Counsel for petitioners, and due deliberation having been had thereon:

It is Ordered that the said application, be and the same hereby is denied in all respects.

Enter:

James J. Callahan
Clerk

Rec'd from Mr. Callahan
Opened 1/21/64

A 385

Supreme Court Appellate Division
Second Judicial Department
BROOKLYN 1, N.Y.

GEORGE J. BELDOCK
PRESIDING JUSTICE

November 14, 1963

William Robert Klein, Esq.
100 Fifth Avenue
New York, N.Y.

Dear Sir:

I have your letter of October 30, 1963, addressed to this Court, entitled: "Re: Order October 9, 1963, Judicial Inquiry on Professional Conduct," and your recent letter of November 10, 1963.

As you were previously notified, this Court by order entered October 9, 1963, as amended by order entered October 30, 1963, referred this matter to the Judicial Inquiry on Professional Conduct for the purpose of having a record made, under oath, of any and all charges made by you and your clients arising out of the "Fun Fair Park" litigation.

Accordingly, all applications to this Court with respect to this proceeding must comply with the applicable provisions of the Civil Practice Law and Rules and with the Rules of this Court. All such applications must be made on a proper affidavit, under oath, and must be made on notice to the counsel for the Judicial Inquiry on Professional Conduct.

You are further advised that letters or other communications which do not comply with the requirements hereinabove set forth will not be considered in connection with this proceeding.

Very truly yours,

BEST COPY AVAILABLE

A 386

Supreme Court Appellate Division
Second Judicial Department
BROOKLYN 1, N.Y.

GEORGE J. BELDOCK
PRESIDING JUSTICE

November 14, 1963

William Robert Klein, Esq.
100 Fifth Avenue
New York, N.Y.

Dear Sir:

I have your letter of October 30, 1963, addressed to this Court, entitled: "Re: Order October 9, 1963, Judicial Inquiry on Professional Conduct," and your recent letter of November 10, 1963.

Klein is Below 11/10/63?

As you were previously notified, this Court by order entered October 9, 1963, as amended by order entered October 30, 1963, referred this matter to the Judicial Inquiry on Professional Conduct for the purpose of having a record made, under oath, of any and all charges made by you and your clients arising out of the "Fun Fair Park" litigation.

Accordingly, all applications to this Court with respect to this proceeding must comply with the applicable provisions of the Civil Practice Law and Rules and with the Rules of this Court. All such applications must be made on a proper affidavit, under oath, and must be made on notice to the counsel for the Judicial Inquiry on Professional Conduct.

You are further advised that letters or other communications which do not comply with the requirements hereinabove set forth will not be considered in connection with this proceeding.

Very truly yours,

George J. Beldock

A 387

CHARLES S. DESMOND
CHAIRMAN

BERNARD BOTEIN
GEORGE J. BELDOCK
FRANCIS BERGAN
ALGER A. WILLIAMS
OWEN McGIVERN
WILLIAM B. GROAT
KENNETH B. MacAFFER
ROBERT E. NOONAN
JOSEPH A. COX
CHANDLER S. KNIGHT
FRED A. YOUNG
LEO J. YEHLE
JOHN M. MURTAGH
ROCCO A. PARELLA

THE JUDICIAL CONFERENCE
OF THE
STATE OF NEW YORK
270 BROADWAY
NEW YORK 7, N. Y.
BARCLAY 7-1616

THOMAS F. McCOY
STATE ADMINISTRATOR

November 13, 1963

William Robert Klein, Esq.
100 Fifth Avenue
New York, New York

Dear Mr. Klein:

Your communication of November 9th, 1963 has been received at this office and it has been forwarded to the Appellate Division, Second Judicial Department.

Very truly yours,

William A. Bulman, Jr.

William A. Bulman, Jr.
Assistant Counsel

WAB:EH

A 388

AT a Term of the Appellate Division of the Supreme Court of the State of New York, held in and for the Second Judicial Department at the Borough of Brooklyn, on the 30th day of October, 1963.

PRESENT:

HON. GEORGE J. BELDOCK,
Presiding Justice,
" PHILIP M. KLEINFELD,
" MARCUS G. CHRIST,
" ARTHUR D. BRENNAN,
" L. BARRON HILL,
" SAMUEL RABIN
" JAMES D. HOPKINS,
Justices

ORDER AMENDING ORDER

- -

On the Court's own motion, the order of this Court dated and entered October 9, 1963, is hereby amended to read as follows:

AT a Term of the Appellate Division of the Supreme Court of the State of New York, held in and for the Second Judicial Department at the Borough of Brooklyn, on the 9th day of October, 1963.

PRESENT:

HON. GEORGE J. BELDOCK,
Presiding Justice,
" HENRY L. UGHETTA,
" PHILIP M. KLEINFELD,
" MARCUS G. CHRIST,
" ARTHUR D. BRENNAN,
" L. BARRON HILL,
" SAMUEL RABIN,
" JAMES D. HOPKINS,
Justices

- -

WILLIAM ROBERT KLEIN, an attorney and counselor-at-law of 100 Fifth Avenue, New York, N. Y., having heretofore addressed various communications to this Court, to the Governor of the State of New York and others, complaining about and demanding an investigation of his charges of alleged misconduct and corruption on the part of members of the Judiciary and members of the Bar in connection with the litigation in an action entitled "Fun Fair Park, Inc., et al., v. Frances Ursini, et al.,"; it is

ORDERED, that pursuant to the order of this Court entered

December 19, 1962, as amended by order entered October 9, 1963, the said charges be and they hereby are referred to the Judicial Inquiry on Professional Conduct for Kings County, Mr. Justice Edward G. Baker presiding, for the taking of testimony, under oath, and for a report which shall set forth his findings with respect to said alleged charges; and it is

FURTHER ORDERED, that in addition to the charges made by said WILLIAM ROBERT KLEIN, attorney, the charges made by FRANCES URSINI and JOHN R. URSINI, his clients, in their various communications, be and they hereby are also referred to the Judicial Inquiry on Professional Conduct for Kings County, Mr. Justice Edward G. Baker presiding, for similar action; and it is

FURTHER ORDERED, that the Clerk of this Court is directed to forthwith transmit to said Judicial Inquiry on Professional Conduct the complete ~~file in this matter~~.

E N T E R:

GEORGE J. BELDOCK
Presiding Justice

E N T E R:

George J. Beldock
Presiding Justice

A 390

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY

SOL NEIL CORDIN
COUNSEL TO THE GOVERNOR

October 29, 1963

William Robert Klein, Esq.
100 Fifth Avenue
New York, N. Y.

Dear Mr. Klein:

On behalf of Governor Rockefeller, I acknowledge your letter of October 23, 1963. In view of the action taken by the Appellate Division, there is at this time no appropriate basis for action by the Governor.

Very truly yours,

A 391

Supreme Court Appellate Division
Second Judicial Department
45 MONROE PLACE
BROOKLYN 1, N. Y.

JOHN J. CALLAHAN
CLERK

October 10, 1963

William Robert Klein, Esq.
100 Fifth Avenue
New York, N.Y.

Dear Sir:

Enclosed herewith is a copy of an order of this Court, dated October 9th, referring all of the charges made by you in all of your correspondence to this Court and to the members thereof, and to the Governor of the State of New York, to the Judicial Inquiry on Professional Conduct for Kings County, for the taking of testimony under oath, and report, as provided therein.

Very truly yours,

J. J. Callahan

JJC:s
Encl.

Clerk

Exh. A.

BEST COPY AVAILABLE

A 392

WM. ROBERT KLEIN
COUNSELOR AT LAW
ONE HUNDRED
FIFTH AVENUE
NEW YORK
WATKINS 9-1884

October 14,1963

Hon.Nelson A.Rockefeller
Governor of State of New York,
Executive Chamber,Albany,N.Y.

Your Excellency:

The writer addresses you,not as an attorney now for a private cause;but as a citizen,whose specialized experience,finding himself so often engaged in defense of underdog causes,or of people being'pushed around' ,commonly known as 'lost' causes, both prompts and enables him to thus address you.

The administration of Justice is,of necessity,a tender process, and a frail read,indeed, upon which a free society,and a just one, must lean. It has been referred to as "the firmest pillar of good government", the last bulwark of a free society.

According to the article appearing in the Reader's Digest,March 1963 Edition, California is the only other State which has the equivalent of our Judicial Conference,for the stricter supervision of the Courts in their day-to-day meting out of justice to the public,as set up by Article 7 a of the Judiciary Law of New York State(of recent origin).

It is well known, that attorneys ,much less the uninformed lay litigant will be reluctant to invoke its remedial provisions,except under the extremest provocation,however much,and often,that need of justice may be subjected to so hard,or bending pressures. The Fun Fair cases are here pertinent only for the lessons,(real,or discernible by a political eye),(with Republican undertones)which they likely bear.

Through the appointment of a Moreland Commissioner,a concerned Governor-yes, a Republican Governor,-in coincidence, has a rare opportunity,starting from a fact of nine-months' inaction, judicial, at both the administrative and supervisorial levels,to make legislative recommendations,as well as developing the evidence,toward plugging up apparent leaks in the present law,by which administrative sitting upon an asserted grievance,can serve in shield of a fellow judicial officer, under question.

The opportunity is even greater.California, by that cited Article of the Digest, takes most seriously, its judicial protections.It would appear, however, thatthe adoption of such Judicial Council or Conference has not yet attained its deserved nation-wide recognition, by appropriate Federal or State legislation.A concerned public is entitled to it.You already engage national attention,having a national platform,ready made. You can popularize a national demand therefor.

Most respectfully submitted,

William R.Klein

k/t

A 393

Wm.Robert Klein
Counselor at law
One Hundred
Fifth Avenue,
Watkins 9-1084

October 1st,1963

Re: [illegible]

Dear Corbin,

[illegible] of response and for your compliance with
[illegible]ven,as to review of our correspondence exchange,
[illegible] the apprehensive thesis of clients and their attor-
[illegible]f, it is a refreshing experience for this matter.

[illegible] number of letters to the Governor's office may perhaps
[illegible] considered as "many",on the contrary,that may well
[illegible] of those addressed to the Appellate Division,its Presi-
[illegible]ddon, or informally to the Departmental Director,J.Bertram
[illegible], whom you may know as a former law partner of ex-Chairman
[illegible]Liquor Authority,Martin Epstein,Esq.

[illegible] be stated now,that which a letter was,in multiplicate,
[illegible] to each of the eight members of the Appellate Bench,
[illegible]ained that it contained a Court of Inquiry,that clients
[illegible] the novel retribution of receiving a first ,as well as
[illegible],whereupon,under our letter's pre-ink,followed by
[illegible]diate Bench members' "Consultation",by P.J.'s[illegible] letter.

[illegible] silent interim of nine months,the originally charged offense:
[illegible]ction of the incumbent Judge,have been most seriously com-
[illegible]llowed by an obvious process of diversion and suppression,
[illegible], while all the time retaining and directing control of
[illegible] a judicial vehicle , disposing of the fate of those whom
[illegible]ly counter-attacked, instead of stepping down.The Appellate
[illegible]ilent tolerance of that elementarily inadmissible condition,
[illegible] of our Board for replacement,as it had earlier done in
[illegible]ating our extraordinary Special Term,for Queens County,
[illegible]And elo to preserve a similar disposal of our appellate
[illegible]ntinely apart from the matters with which Judicial
[illegible]ion,under Article 7 a of Judiciary Law,can concern itself,
[illegible]Fund"allegations, or "influence" charted collectively)

culminated in clients' exhibition of their worst fears
[illegible]: Mysteriously much the arrival of your most "infor-
[illegible]to t[illegible],dated September 27th last.once the
[illegible]ients said that a letter,that the Presiding Justice,-in
[illegible]ing for his Court,-"informed" the Governor,and what to do
[illegible]on the same matter,seem diametrically opposed ,inexplicable
[illegible]ion.

BEST COPY AVAILABLE

When in April(4) 1960, the Queens Bench,after recital of history in those cases by this attorney,voluntarily withdrew in favor of an out-of-county Justice to preside thereover,on offer to us,I made for the record then,.the following statement to the Court:(instructed by client:

> "My clients, who bring this Investigation proceeding pro se,continuing fearful in the circumstances,nonetheless accept the designation of Hon.A.David Benjamin, Kings County Justice upon two conditions.."

The P.J.'s letter to me purports to be dispositive of the demand for Investigation,pin pointing in the making,with a single sitting,without any reference whatsoever to the essential demand for replacement of the counter-securing Judge,needed for completion of the unfinished large legal issues still extant in the court below.

The P.J.'s letter to me purports to be a collective acknowledgment of receipt of nine months of communications,previously unacknowledged, and purports to report that they were all "considered" "to-date."It proceeds to refer to "an appeal to this Court" as having been "peremptorily" put down for argument,against us as appellants, for September 30, inst;but no decision heretofore issued by this Court contains any "peremptory" such relief but have "the ship is moving",in direction of fulfillment of adversary's strangulative design, both to knock out our protective appeal(the record to be many thousands of pages,but all presently pending appealed and irremediable for any appeal,by Judge's order) and to prevent our resumption of the unfinished legal business below, while also by-pass any Investigation,and ignoring demand for replacement of Judge.

What is more remarkable as to this advance "peremptory" note, is that at this very moment we had a motion before the Court for extension of the to perfect appeal(should that become necessary ,upon newly assigned Judge's disposition of such unfinished proceedings),which motion was not returnable or to be submitted upon papers to be filed,until September 30th inst.

The P.J.'s letter to me then goes on to announce most vaguely,and with nothing so much as the barest hint conveyed in nine months, that any action of any kind had ever been taken by anyone,Departmental Director or member of the Court, except on the date of the letter itself,to wit September 25th,in face of Court transcription,that "the charges" "have been heretofore referred to theDistrict Attorney of Kings County", with not the slightest elimination,as to whose referral act that was.

The fact is, that the Trustee, bending in all directions,for Investigation, also turned to the District Attorney of Kings County,and this much am is able to say, from Brodsky's check, that the only time the D.A.'s office acted was on the Trustee request, and that resulted in that Office concluding that the matter of Judge's alleged misconduct was for the Judicial Conference,and not the D.A.'s Office, to investigate. That was far back in April,1963.

The P.J.'s letter to me concludes,therefore, in view of the referral to the D.A.'s Office and the appeal's pendency,the"Court respectfully DENIES your request for further action by it". Save the"charges"are good.

Now all this is in sharp contrast to the P.J.'s letter to you,as yours reports and reflects it: (Upon your request,I shall forward a photostat

of the P.J.'s letter to me).

Now to the contents of the P.J.'s letter to you:

Having in letter to me requested the Court's "denial" of "action" as requested(i.e. for investigation),we are now informed through yours, "that a complete and thorough investigation has been made.."The P.J. went much further: "repeated requests for evidence to support your client's claims have been met with a negative response"!!

None of these things , of such communications to us,ever occurred to my or clients' knowledge. However, and this increases the mystery,- even this or two occasions, when we demanded that no motions had ever been forthcoming from the Court or the addressed P.J.,to staff members of the Courthouse,attributed to the Judges or the P.J., they each expressed knowledge,as if they knew the contrary.Do these "denials" "repeated" refer to replies not set in your letter,and and "many requests", appear in letters-emphasis in the plural- of the Court,only a wall of silence confronted us and we were repeatedly embarrassed by it.

We have never been called upon to furnish evidence and we have never been informed that "no support whatever was found for the charges", have we learned, while we already complained in the P.J.'s letter to me , that unidentified friends, to our knowledge, no witnesses to the tune of an available fund of $100,000 or the use of influence to effect dismissal of the Charges, generally noised by correspondence of attorneys on their letterhead , of the status of charges as to the Judge's definite physical departure of that high office,during Court sessions,have ever been reported or called by anyone.

But a great deal of urgency for the Investigation has had its source from subversives and the Judge himself, in the record terms;all are agreed ,on the written record, and in a most recent affidavit,dated September 27,1963, just filed with the Court to hold it for contention that such Investigation would be violence,and is criminal,and cannot be lawful acts, except the /possible/ Petition, by its letter to me, denying request to appear,clearly for the first time,on September 25th last. Certainly the P.J. must realize that the matters of "such Court-influence charges" are not matters for appeal,and neither would appear yet as in the record,although the stenographic record,which has to our knowledge been in improper status, inaccessible to anyone, so far as we have tried to look into it for appeal or otherwise,points up these charges and furnishes foundation evidence, therefor.

Correspondingly, I submit, these statements of your letter are complete news to clients and me,and come with shock. Till now we have chafed for lack of any answer in nine months, that the Assembly enjoyed by our representation the Judge,for this unlawful-tainted,is indicated to view. Clients no longer have any doubt that the common political opportunism and cross-exchanges of these key persons herein affected or testing, offer explanation for such strange silence over so sustained a period, referring to the Departmental Director,the Incumbent Judge and the P.J.

The final reason for convening a Court of Inquiry,or appointment of a Fact-Finding Commission, or Board of Judiciary ,has been supplied.The precedents of the Ullmann and Chessman cases point up action here.

P.....?

The Governor and the President of the United States have both placed their faith on record, that this one, or a group, can be tried and judged by the normal processes of law and order, they are entitled in keeping the public opinion in their favor an means of obtaining official action in connection, to which they may be entitled.

I can think of nothing more fitting with which to close this letter that to quote from the Judge Incumbent, on the record of hearing had on February 16th, 1903, irrespective of the sincerity present :

"THE COURT:.....

Now I am addressing myself to you, Mr. Impeach and you, Mr. Feldiff. A great many letters have been sent to the Court and to other tribunals and others as well charging [illegible] system of the administration of justice and a [illegible] which fund is coming from your old man an sum of $100.00 and $50.00 etc. the pollution of [illegible] and your action and especially the purchase of [illegible] Those are matters able absent no ribbon from [illegible] and Clerk [illegible] Now....
I charge you with the criminality of assault to [illegible] [illegible] and not [illegible] and also with [illegible] [illegible] by the [illegible] that [illegible] you."

Apparently, the Tribunal are the only ones interested in inquiry. What is not at stake is not merely the administration of justice, but also, sturdily brought to the fore, the administration of supervision by the watch-dog agencies created by statute to help insure a true administration of justice in the Courts of the State,--the last bulwark of a free people.

Sincerely yours,

William R. Klein
Attorney for the Defendants.

R/t

A 397

AT a Term of the Appellate Division of the Supreme Court of the State of New York, held in and for the Second Judicial Department at the Borough of Brooklyn, on the 9th day of October, 1963.

PRESENT:

HON. GEORGE J. BELDOCK,
Presiding Justice,
" HENRY L. [illegible],
" PHILIP H. HOFSTADTER,
" MARCUS G. CHRIST,
" ARTHUR D. BRENNAN,
" L. BARRON KELL,
" SAMUEL RABIN,
" JAMES D. HOPKINS,
Justices

WILLIAM ROBERT KLEIN, an attorney and counselor-at-law of 100 Fifth Avenue, New York, N. Y., having heretofore addressed various communications to this Court, to the Governor of the State of New York and others, complaining about and demanding an investigation of his charges of alleged misconduct and corruption on the part of members of the Judiciary and members of the Bar in connection with the litigation in an action entitled "Fun Fair Park, Inc., et al., v. Frances Ursini, et al."; it is

ORDERED, that pursuant to the order of this Court entered December 19, 1962, as amended by order entered October 10, 1963, the said charges be and they hereby are referred to the Judicial Inquiry on Professional Conduct for Kings County, Mr. Justice Edward G. Baker presiding, for the taking of testimony, under oath, and for a report which shall set forth his findings with respect to said alleged charges; and it is

FURTHER ORDERED, that the Clerk of this Court is directed to forthwith transmit to said Judicial Inquiry on Professional Conduct the complete file in this matter.

ENTER:

Presiding Justice

A ,398

C O P Y

Mm.Robert Klein
Counselor at law
One hundred
Fifth Avenue,
New York
Watkins 9-1684

September 30,1943

Hon.George J.Beldock
and associate Justices
Appellate Division,
2d Judicial Department,
Nassau Plaza,Brklyn.,N.Y.

Re:Pan Pale Meat cases
Administration

Honorable Sirs:

I am [illegible] receipt of your [illegible] dated [illegible] September [illegible] and [illegible] your Court,since January 1. A.D.In that my client I had those letter of Statement & [illegible] for the [illegible] letter, charges of [illegible] charges against the Judicial Incumbent since the year Dejudicata. [illegible] request.It was then only that communications by the Judge against the Union & the Union attorney,pursued an [illegible] [illegible] tion of practicing at Counsel's & possible [illegible] for the large number [illegible] business and [illegible] of the Court below,to a fair judge became an [illegible] necessity.

Consideration of the collateral [illegible] letters,more receipt is for the first time acknowledged, by the members of this Court of Conciliation today , [illegible], I submit, the equivalent of an open Course of Leniency of the entire Bench [illegible] the same factual content of those letters[illegible] before the [illegible] requirement so to be sure,that their gravity be such has been readily observed by the Judge Incumbent,and now all parties affected have unfailingly expressed, irrespective of [illegible] by their [illegible] Leniency. As matter of fact, reversely quoted in affidavit [illegible] petition [illegible] [illegible] on September [illegible]. Here, disclaiming all intention to [illegible] old or [illegible] to [illegible], [illegible] [illegible] problem of [illegible] to [illegible] [illegible]. A [illegible] to the Appellate [illegible] [illegible] [illegible]

A 399

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY

SOL NEIL CORDIN
COUNSEL TO THE GOVERNOR

September 27, 1963

William Robert Klein, Esq.
100 Fifth Avenue
New York, N. Y.

Dear Mr. Klein:

As a result of your telephone call to me last week, I have reviewed the correspondence in our files relating to Fun Fair Park, Inc. and Mr. and Mrs. Ursini.

In addition to the many letters which we have received from you and from Mrs. Ursini, we are also in receipt of a letter from the Presiding Justice of the Appellate Division, Second Judicial District, concerning this matter. He has informed us that a complete and thorough investigation has been made and that no support whatever was found for the charges which have been made on behalf of Mr. and Mrs. Ursini, except that there were questions which might be raised on appeal. The Presiding Justice has also stated that you were repeatedly advised to take an appeal so that these questions, if meritorious, could be reviewed, but that to his knowledge no such appeal had been taken. The Presiding Justice has further stated that every consideration has been given to your clients and that repeated requests for evidence to support your clients' claims have been met with a negative response.

Under these circumstances, I do not believe at this juncture that there is a basis for action by the Governor.

Sincerely yours,

Sol Neil Cordin

A 400

Supreme Court Appellate Division
Second Judicial Department
BROOKLYN 1, N.Y.

GEORGE J. BELDOCK
PRESIDING JUSTICE

September 25, 1963

William Robert Klein, Esq.
100 Fifth Avenue
New York, N. Y.

Dear Sir:

Your various communications addressed to me, to my Associates and the Clerk of the Court, complaining about and demanding an investigation of alleged misconduct on the part of members of the Judiciary and members of the Bar, in connection with an action entitled "Fun Fair Park Inc., et al. v. Frances Ursini, et al.", have been received and were considered by the members of this Court at Consultation today.

An appeal to this Court from the judgment rendered in the above entitled action is presently pending and has been peremptorily set down for argument or submission on September 30, 1963. Moreover, the charges of alleged misconduct embodied in the various letters above mentioned have been heretofore referred to the District Attorney of Kings County, for appropriate action.

In view of the above, this Court unanimously denied your request for further action by it.

Very truly yours,

George Beldock

Presiding Justice

A. 401

Rep. Hébert

September 20, 1950

[illegible]

BEST COPY AVAILABLE

A 402

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY

SOL NEIL CORDIN
COUNSEL TO THE GOVERNOR

July 26, 1963

William Robert Klein, Esq.
Counselor At Law
100 Fifth Avenue
New York, New York

Dear Mr. Klein:

On behalf of Governor Rockefeller, I acknowledge your recent letter concerning a law suit which apparently resulted in a verdict adverse to your client.

As you know, under our Constitution, the Governor has no jurisdiction over the courts and, therefore, may not interfere in matters decided before them. He may not substitute his judgment for that of the Court.

In your letter, you imply that either the court or opposing counsel may have been guilty of impropriety during the course of the trial. If you have evidence of misconduct on the part of the court or on the part of opposing counsel, I would strongly recommend that you clearly set forth the charges and the evidence in support of those charges and transmit the same to the appropriate Department of the Appellate Division.

Sincerely yours,

Archibald R. Murray
Assistant Counsel

A 403

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY

SOL NEIL CORBIN
COUNSEL TO THE GOVERNOR

July 15, 1964

Mr. & Mrs. John Ursini
29-42 211th Street
Bayside, New York

Dear Mr. & Mrs. Ursini:

On behalf of Governor Rockefeller, I acknowledge your telegram of July 8, 1964, concerning court proceedings relating to an amusement park in which you have a financial interest.

As Mr. Corbin explained in his letter of June 7, 1963, this is not a matter in which the Governor can intervene. But once again, in an effort to be helpful, we are forwarding your letter to the State Administrator of the Judicial Conference of the State of New York for his consideration.

Sincerely yours,

Richard E. Stewart
Assistant Counsel

SPECIFIC IRREGULARITIES OF JUDGE BENJAMIN

Open, written mutual charges of influence("Col.Brady " IGNORED.

Withholding the stenographic transcript from the files.

Withholding the file of the cases, for three years, permitting

The afterthought INSERT of a pre-dated "DECISION", effecting retroactively the entire record.

Ignoring a series of motions, duly noticed, and omission of adversaries to attend, (whose absence seemed prearranged) and then refusing to sign order to show cause to bring adversaries in (while rescission order(Oct.10, and decree of Oct.17, 1962, going forward ex parte)

Assuring Judicial Conference(Wegman) that motions would be heard, then refusing, then denying to Wegman(as reported by him, that he had refused to hear them)

Placing Investigation of charge of"$100,000 slush fund-influence" in charge of Dupont-Gottlieb and Schiff.

Demanding as price for signing order to show cause(March 14, 1963) the "withdrawn" endorsement upon the face of the papers through Weitzner, and then denying same to Wegman(as reported)

Refusing reception of motions, by grand abrupt repudiation, 1-2-63 "reserved"

Repeated repudiation of directions given by him for financial information, restaurant tapes submission, ignoring the repeated refusals of Dupont to comply.

Promise on July 25, 1961 by phone, that no decision would be made on cases after trial, UNTIL they gave FINANCIAL INFORMation; surprise issue August 21, 1963.

Received Robbins initially by saying debts were $850,000 to scare!

Open invitation to ride with Dupont in Volkswagen, on recess .

ADHERENCE TO THE PATTERN of control.

et al., et al.....

SPECIFIC IRREGULARITIES OF Director WEGMAN:

1. Gave clean bill of confidence in Judge Benjamin, in advance

2. Denied that he had requested formulated charges to be entertained thereupon by Judicial Conference

3. Denied that any knowledge in him of pending Investigation at Administrative Board

4. Whole Jud. Conf. file missing and misplaced (as reported by Ughetta Actg. P.J. Secy, with Wegman unaware; file reported with him eventually when found, did not know Adm. Bd. had referred to App. Div. 2nd Dept.

5. Never acknowledging receipt of Letter of Statement and Demand(1-7-63

A 405

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY

SOL NEIL CORDIN
COUNSEL TO THE GOVERNOR

June 19, 1963

Mrs. Frances Ursini
29-42 211 Street
Bayside, New York

Dear Mrs. Ursini:

On behalf of Governor Rockefeller, I acknowledge your letter of June 11, 1963 concerning your earlier communication of May 14, 1963.

As Mr. Corbin informed you in his letter of June 7, 1963, this matter has been referred to the Judicial Conference of the State of New York for their appropriate attention and consideration. Your most recent letter will also be brought to their attention so that they may be fully aware of the implications contained therein.

Thank you for your interest and courtesy in writing.

Very truly yours,

Melvin H. Osterman, Jr
Assistant Counsel

City, and State of New York, County of [redacted]: ss.:

A 406 [redacted], being duly sworn, deposes and says:

I am the attorney for the Urraini parties named below.

This affidavit is [redacted], in furtherance of [redacted]

[redacted] charges [redacted] Court, [redacted]

[redacted] and which [redacted] Urraini with the Judicial Conference of State of New York, by letter of Counsel and Deponent, dated January 3/8,1963, and reduced to specific formulation, as such, on February 7,9,1963,as requested by Departmental Director of Judicial Administration,on or about February 6,1963,and which, in addition,were followed by five more formulated charges against the incumbent Judge,on or about February 16, et seq., filed with the State Administrative Board of Judicial Conference,and all transferred or filed, to the Appellate Division, Supreme Court,2nd Dept.R.C. on or about March 5,1963.

Judge Benjamin first demanded full inquiry at Court, on February 13, then more specifically on February 18,1963, but it was finally placed into the hands and disposition of adversary counsel, Messrs. Dupont, Scottish and Potter(the alleged source of all the wrongdoing) the conduct and responsibility of such inquiry. On [redacted] 1963, he learned there counsel for their function, as above [redacted] while deponent was officially moving and had already moved both before the District Attorney's office and the Judicial Conference,as provided by law for such matters, as charged:

(a) That on Sept.11, 1960(on), [redacted] Scottish(with consent) defendant and alleged malfeasor,in Court, apparently announced that a $100,000 fund was available to finish off the Urraini and their attorney, this deponent,which ,they would accurately name[illegible] if the Judge would allow them to use their own"private attorney". The offer and invitation was then denounced by deponent as "corrupt" and a continuation and confirmation of a prior "$40,000 slush-fund" allegation in March(31)1960, whereupon the Supreme Bench withdrew from the cases, in favor of an offered "out-of-county" "fresh" Judge.

(b) In October 1962,while the Judge had a motion before him by which adversaries sought to obtain a release of a $100,000 fund on Deposit at Kings County Trust Company, to Frances Urraini's credit and title,to which was vested in her, as of last,which, if released would torpedo all her chances of enjoying the already deemed paltry portion of the lucre parcel, a letter was sent to him, now impounded in the file,dated October 3(ca), 1962,advising him that the opposition (Robbins) was associating itself with use of influence in [redacted] or one "Col. Hardy", to win the motion,as therein stated;thereupon by reply letter, Robbins , making thin, pro forma denial to the factual statement of Deponent's letter,counterclaimed that this Deponent was"guilty of the very impropriety"being himself charged with. The Judge was thereupon requested in the presence of these mutual cross-allegations of use of influence, to withdraw and arrest the proceedings (and/or arrest the parties,being then before the Court), [redacted] $100,000 fund, as forced, although at that very moment, there were three adverse-conflicting claims of title to the $100,000 before him, under oath.

(c) Simultaneously, as he deprived Urraini of that $100,000 fund, virtually ex parte, granted to the Dupont parties, as they could, by reconfirmatively their claim to its title, a surprise, almost $40,000, arbitrary addition to the price payable by Urraini for redemption, by a decree,dated October 17,1962,---as cruel [redacted] as opposed and alleged, and violating the terms of his prior [redacted] of November 9,1961, governing conditions of redemption by Urraini.

There are five other grave charges against the Judge; statement of all, he adheres to the crux, [redacted] charges he and the three judicial b[illegible]ers,charged with action, in such [redacted] of judicial conduct,(Judicial Law., Art. iv., [redacted] to be an official action,while the Judge loudly declares [redacted]

Sworn to before me this 14th day of June,1963 William K.

Petitioners' Addendum:
A Continuation of Recital of Specifications:

(a) Announced availability of funds of $50,000 and $100,000 sourced in adversaries, to defeat justice, the latter announcement made in connection with invitation to the Judge in Court, to be allowed to employ their own private strategy to finish off their opposition, these petitioners and their attorney and the 'finish' realized.

(b) Exchange of communications to Judge, pointing out the alleged admitted use of personal outside influence to affect a motion for release of $100,000 fund, subject to three adverse conflicting claims to its title; and with denial, counterchanging some against adversary, followed not by arrest of parties or proceedings by the Judge, but forthwith release of the $100,000 to the alleged admittor.

Simultaneously, as petitioners are deprived thus of their fund, as by them claimed to have vested in them, one of the adverse claimants, (our adversary parties) by their attorney, abandons all active claim thereto, and what appears to be generous compensation for such abandonment, abrupt, is an equally abrupt entry of an interlocutory decree granting petitioners redemption of the subject realty, at an arbitrarily, substantially raised "price" (equal to $100,000 or so) and foreclosing adversaries" need to give accounting of their five-year custody of the subject realty, which might by such amount, reduce petitioner's cost of redemption, and perhaps more. (Interlocutory decree entered October 17, 1962)

(c) The Judge's insertion, in the so-called "final" decree, in self-reversal of the interlocutory decree, in cancelling out right of redemption, of an enabling "decision" bearing old date of October 2, 1961, to the complete surprise of all parties (as admitted by adversary counsel) never theretofore appearing (entry of final decree on March 1, 1963, dated February 28, 1963) anywhere, and not received anywise in the interlocutory decree of October 17, 1962), all without any notice to petitioners.

(d) Sudden repudiation of all stipulations with Court, rulings and assurances of absolute reserving of some 7 "key motions" of petitioners, fundamentally affecting both decrees, on January 2, 1963, by the Judge, and in violation of similar assurances given to Departmental Director, as reported by letter to petitioners, and refusal to hear or receive them, as agreed on the record, to be had before any decree would be finally made.

(e) Judge's threatened and actual application of physical force to petitioners' attorney, to compel his attendance in the Courtroom, while attorney claimed physical indisposition and weakness, and inability to attend, forcing him into courtroom through three attendants' threats to drag him in, from first and room, on another floor, in utter derogation of the Bar and Bench, and administration of justice.

(f) Judge's compounding of offense, diverting and suppressing the charges against him, and efforts to defeat the authority and jurisdiction of the Judicial Conference, by conduct [illegible] petitioners and attorney.

(g) Judge's continued adherence and retention of control of the million-dollar subject litigation, and direction thereof, [illegible] in deep personal vendetta, extending over into [illegible]

BEST COPY AVAILABLE

A 408

CHARLES S. DESMOND
CHAIRMAN
BERNARD BOTEIN
GEORGE J. FELDOCK
FRANCIS BERGAN
ALGER A. WILLIAMS
OWEN McGIVERN
WILLIAM B. GROAT
KENNETH B. MACAFFER
ROBERT E. NOONAN
JOSEPH A. COX
CHANDLER S. KNIGHT
FRED A. YOUNG
LEO J. YEHLE
JOHN M. MURTAGH
ROCCO A. PARELLA

THE JUDICIAL CONFERENCE
OF THE
STATE OF NEW YORK
270 BROADWAY
NEW YORK 7, N. Y.
BArclay 7-1616

THOMAS F. McCOY
STATE ADMINISTRATOR

March 4, 1963

William R. Klein, Esq.
One Hundred
Fifth Avenue
New York, New York

Dear Mr. Klein:

In accordance with policies adopted by the Administrative Board of the Judicial Conference, your communications have been forwarded to the Appellate Division, Second Department for consideration.

Very truly yours,

State Administrator

TFM: ED

A 409

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY

SOL NEIL CORBIN
COUNSEL TO THE GOVERNOR

June 7, 1963

Mrs. Frances Ursini
29-42 211th Street
Bayside, New York

Dear Mrs. Ursini:

On behalf of Governor Rockefeller, I acknowledge your recent letter, which was received on May 31, concerning court proceedings relating to an amusement park in which you have a financial interest.

Under our Constitution, the Governor has no jurisdiction over the courts and, therefore, may not interfere in matters pending before them. The Constitution provides for the complete separation of the executive and judicial functions of Government. Our laws provide a method whereby the decisions of the courts may be appealed to successively higher courts.

Nevertheless, in an effort to be of assistance, I am forwarding your letter to Thomas F. McCoy, State Administrator of The Judicial Conference of the State of New York, for his appropriate attention and consideration.

Very truly yours,

Sol Neil Corbin

A 410

CHARLES G. DESMOND
CHAIRMAN
BERNARD BOTEIN
GEORGE J. BELDOCK
FRANCIS BERGAN
ALGER A. WILLIAMS
OWEN McGIVERN
WILLIAM B. GROAT
KENNETH S. MACAFFER
ROBERT E. NOONAN
JOSEPH A. COX
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ROCCO A. PARELLA

THE JUDICIAL CONFERENCE
OF THE
STATE OF NEW YORK
270 BROADWAY
NEW YORK 7, N. Y.
BArclay 7-1616

THOMAS F. McCOY
STATE ADMINISTRATOR

June 12, 1963

Mrs. Frances Ursini
29-42 211th Street
Bayside, New York

Dear Mrs. Ursini:

In accordance with policies adopted by the Administrative Board of the Judicial Conference, your letter of complaint has been forwarded to the Appellate Division, Second Department for consideration.

Very truly yours,

William A. Bulman, Jr.

William A. Bulman, Jr.
Assistant Counsel

WAB:EH

[illegible]
Frances Ursini
Ha-8-0530

A 411

FUN FAIR PARK

AMUSEMENTS
GOLF
[illegible]
WHITESTONE PARKWAY AND LINDEN PLACE FLUSHING, NEW YORK

COPY

January 3,196[illegible]

J.Bertram Wegman
Administrator,
Judicial Conference
Borough Hall, Brooklyn.

Dear Sir:

We,the undersigned, [illegible] Ursini, the builders and owners of Fun Fair Park Inc.,hereby demand,and do renew decisive demand for basic investigation of the forces at work,in "breakdown of the administration of law,order and justice" in the Fun Fair case;for what we have seen and heard this time,and the culminating events at hearing just had on January 2,becomes for more indicative and and disturbing than the events,which brought on similar applicatio at Queens Supreme Court,Special Term in March(31) 1960,and which was followed by,the withdrawal of that Bench, in offering self-correction,from those cases, The Queens Bench withdrew,with approva of the Appellate Division,in favor of total assignment,with single continuous control,to Hon.A.David Benjamin;whose name was offered as an "out-of-county" Justice,learned and able,and"not known to" any of the parties" in the cases,to preside over the jurisdiction and business administration involved in the cases,at an Extra Speci Term.

At that time,Albert A.Dupont was centrally implicated in the situations complained of,as one who had been called in for his 'local weight' by experienced,competent counsel acting for our opposition; although he then represented other and conflicting interests in the subject matters. Mr.Gottlieb, the real counsel for the opposition, has been out of the case,virtually since October ,1961,leaving all the smoother Mr.Dupont.

When we were offered at Court,and accepted,the designation of Justi Benjamin, as the record shows,we were assured; but we instructed our attorney, then,to make a statement to the Court,of our continuing [illegible] in the circumstances of the case. Our hearts sank,when,on the first meeting of counsel at Chambers,before the new Judge,he greeted Mr. Dupont as "Al." Since then we learnt further,that the opposition's principal,and front-man,who had made the advances of money in 1958, under a Basic Contract(10-3-58),Harry Gilman,had openly boasted to our attorney, at a time,when he ~~apparently~~ felt he was through, and split from his associates; and had retained our attorney for his further private affairs,that at the time of the offer of the Queens Bench,to step aside, Mr.Dupont had been given anadvance choice of 1 two Judges,and that he chose Judge Benjamin;and Gilman expressed complete confidence that we would never get back the property,no matter how we tried.

At that time, Special Term Court was told that the opposition, in the person of Mr. Gottlieb's principal client, had boasted of holding a "$40,000.""slush fund", to use to defeat justice; and before the new Judge, Mr. Dupont's associate in Court, more brazenly, named a new "$100,000" fund as available, in connection with an open request of the new Judge, that they be left to their own "private strategy" to finish us off, and my attorney; & that would bring the ca to an end, once for all, - as they then tried to do by hopping back t the Queens courthouse, to obtain the services of another Judge there for a rapid dismissal of everything, which was then standing in the way of their walking off with the 10 acres - a million dollar equity for which they had advanced, perhaps, no more than $106,000.

Where, at that time, we were having our hands tied behind our backs at Court, by refusals there to receive or hear us, and Mr. Dupont was then physically seizing the property under that advantage, now we ha come full circle; but the shape of things appears worse. Now hearing and reception, specifically promised by the Judge, after reference o prior refusals to the Judicial Conference, made known to him, are suddenly denied, with the aggravating announcement that he had already decided to do nothing on those matters, and would not hear the

The results, in terms of giveaway and gifts of our money and large property equity, and eliminating the promised, hoped-for relief from those gifts and giveaways, are shocking to us, and they must be, to lawyers, sitting by as audience. The gifts referred to are:

(1) Gift of $96,000 to Dupont and his associates, for their services to our opposition, to be paid for by us.

(2) Gift, of the $100,000 deposit to use and credit of our redemption; title to which had passed to us, and which Dupont and Gottlieb had vehemently claimed, already bein past us, to their client, out of the hands of the third party financiers, upon all conditions precedent having be ruled by Benjamin J. as fully satisfied; thus dumping our readiness and ability to redeem (with Dupont apparently satisfied to waive any further claim to that $100,000 for his clients, without telling why he was letting it go.

(3) Gift of the important "consent", given by Gilman opposite and recorded in his basic decision of August 21, 19[illegible] to insure redemption, as therein consented to, by surprisingly announcing that the Court had never had their consent, so specifically described in the long opinion of that day.

(4) Giveaway of the 10 acres, by suddenly signing decree, while we were awaiting a hearing, - adjourned and deferred - by the Judge, repeatedly (in favor of the more "pragmatic" consideration of closing of the redemption, and thereby perhaps rendering all technical matters academic.)

(5) A fixed "price" for redemption as "$710,000" when that figure has, and had always served only as an agreed "maximum" and which price could be $200,000 lower; and the Judge had always so stated and agreed, and the order then on so reads.

The giveaway, of the 10 acres,is the more drastic,because the City's condemnation of 3 of the 10 acres,which may net some $350,000 to $500,000 to the Corporation,(which had received all the Gilman advances to pay off its debts) can be self-liquidating;and the remedy of redemption by Frances Ursini may be just an additional and unnecessary one.

Yet on the repeated demand of the opposition's Mr.Dupont for a deadline date,-while for, now,2 1/2 years,he has "withheld,exaggerated,distorted and concealed"the essential financial figures for any third-party financing,covering their exclusive custody of the realty for 4 years,-while denouncing them and their counsel,as "most reprehensible(Oct.9,'61) and guilty of a "million misrepresentations" (September 25,1962),Judge has fixed February 1,1963 now as that deadline.

Everything that has happened at Court has been stenographically recorded.What is at stake, hanging in the balance,is our "equity of redemption",finally so described by their proposed,and signed decree of the Judge,but it also provided for their walkaway with the property. The Judge has also said,that lives ,too,hang in the balance.

The Judge cannot be said to have other than tolerated or passed over their withholding of those figures,because they have been able to hide behind a screen of directions and retractions,anddenials of the issuance of either,and both, at different times,throughout that period,emanating from the Bench. The resulting confusion was,of course fully utilised to make it appear that we had been delaying and had had ample opportunity to get financing--impossible under such conditions. When the new money finally appeared,to hear confirmation from Court,as to the costs of redemption,which we had always represented as dictated by the basic contract,-advances plus profit of $60,000,with underlying obligations totalling altogether about $550,000-600,000- the Judge scared out the third party with statement of about"$850,000" or so. Many roadblocks were thrown into the path of redemption;and the Judge,at one time,ordered us to pass up our attorney and allow the stranger attorney for the third party,to act for us, also exactly as Mr.Dupont(clearly starting to "work with" him,against us) requested of the Judge.

The "finishing-off" process,we feel has now been delegated by the Judge to the intolerable Referee,in these last crucial days, His hostility to us and our attorney,-really a solicitude for Mr.Dupont,as appears in the record amply,has all been made fully known to the Judge ,who had earlier expressed sympathy with us and my attorney,-only now, in these crucial closing days,to force us to have him preside over us and our case,and having vested in that man,"absolute discretion" over our fate words inserted in decree by Dupont,and surprisingly left in.

However,when we finally called that to the Judge's attention,he first denied,that was it;then he insisted so;and when our attorney persisted to show it,his answer was:" I rule it is not in there." However we were further shocked to hear on January 2,1963,that he would not alter the decree in any way;that is, he would not hear our motions,-by him ordered repeatedly adjourned,as stated above,for that very purpose. Our attorney stated that there were numerous,obvious and gross errors which the Judge and the opposition,under his prior direction, had agreed to "sit-down", to correct.

BEST COPY AVAILABLE

What has furthered our difficulties is that,after we have appeared before the Referee,-solely as our attorney insists,for informal supervision,-believing that the directions,-given in Court,to be binding on our opposition and Referee,-would be the basis for progress in getting information from Mr.Dupont for ultimate closing,we found that the Referee would deny,under prompting of Mr.Dupont,that any such directions had been made,and would make references to past,private conferences with the Judge,from which he was able to contradict our attorney.

Although the Judge ,by his basic decision,ruled,properly as our attorney advised us,that "The Court cannot enlarge the terms" of the cost of redemption;and although the Referee found that he could not tell what was a "proper" charge against us, they added $96,000 fees to the cost of redemption thus. While we were going to accept that in compromise,to prevent appeal,which Dupont promised,- he has now without disclosing to the Court, that he has appealed from the redemption provision,continued to hold to that; with not a word from the Judge,perhaps because he does not as yet know.

However the Judge said something yesterday to them,-as if he was expecting them not to have to appeal,in the light of the short deadline date,the probable walkaway forfeiture to come to them,or so it seemed to us,-when he found them, despite prior overrule,and of a previous direction he had given them to supply certain cash-register tape information of the restaurant tenancy,refusing still to let us know that accounting: "We do not want the record to show that you had refused to give this information,when it goes to the Appellate Division,so as to make our record look bad."(about)

There was the Judge's sudden refusal to hear our motions,which had been already brought;for,such refusal,with apparent knowledge in advance by the opposition,that they need not come to court,despite proofs of service,four or five times,included a total disregard of a newly discovered disclosure,never previously revealed by them, that they had claimed some $58,000 advances,-never made,etc. That would have changed the entire picture before the Court,if open to such deliberations. Under insistence,when we showed that Dupont had virtually confessed by default,the certified accountant's showing, referring to it solely as "mumbo jumbo",without denial,Judge said "Bring it before the Referee";where,we fear,it could do.

What has finally persuaded us to file this Complaint is the shocking events of yesterday at Court. Always fearful,we could not believe that the Judge could permit such ultimate walkoff with this property. It is, to us,abundantly clear,that the stage is now set for stripping us,for the relatively small advances they made,by their conditional - sale device,especially when the Judge made this sharp self-reversal: Formerly,always accepting,without contradiction from opposition, the Judge then made his quick acknowledgment that,when ,in his decision, of 8-21-61,he made a finding that the transfer of the stock shares (200) had been "outright" and not "limited",conditional and non-negotiable(as set forth on the legend,inscribed by Gottlieb on the face of the shares), he was in error;and that he would make that correction, he,now, for the first time,denied that he had ever done so;and in connection therewith,declared flatly that Judge Baer(NY Supreme Court) had found that there had been an "absolute " sale.We saw a definitely new picture,now.

All this battering and buffeting around, that we are getting, is the more frightening because

(a) In June ,1959, on the trial before Judge Baer, Messrs. Dupont and Gottlieb, on the demand of the Judge, STIPULATED on the record, to waive any and all claim to, and their then existing cause of action in, and for "absolute" sale, title and ownership of those two hundred shares, and to have such cause of action "DISMISSED WITH PREJUDICE" (fols.156--). What he found was a "valid" sale, never and not at all an "absolute" one, having said on the record, , referring clearly to the conditional nature of it, for the conceded "advances" they had ~~made~~, "loan or own, what difference does it make?". His judgment was a conditional judgment, granting only a tentative decree.

(b) It stands uncontested, undisputed and undenied, that never did the Gilmans, as first required of them, before they could ever declare any default under the Basic Contract (under its Section 13, a, b, c, d) do the specific acts there specified--very definite and substantial acts.

(c) It is appearing more and more now, that after they laid their hands on the 200 shares, they never put up, out of their own funds, any more of the advances required of them, beyond maybe $106,000--$155,000 is the sum named in the contract as minimum sum having been agreed before default could be declared. And they are now making frantic efforts to prevent us from looking at their books again, to confirm these new disclosures. For they have been in unwatched control for the past 4 years.

(d) They were to use the first money, to wipe off from the record, some $80,000 of mechanics liens, and we only recently discovered that closing would not be possible on redemption, because none of those, some 28 liens, had yet been discharged, 3 1/2 years later. Our attorney insisted that he be heard on motion, and it was agreed by the Judge that he would be heard, on all this new discovery, that not redemption but rescission, with restoration of the parties, should prevail.

(e) When the Judge heard Mr. Dupont oppose redemption, after having obtained so favorable a decision for his clients, containing his clients' "consent", on ground that both sides had repudiated the basic contract, and therefore it was not enforcable, the Judge declared that he was ready to vacate his decision, and send the whole matter back to Queens.

We stand ready,on call,to make affidavit to all the foregoing, either as matter which came directly within our experience,or as matter immediately reported by our attorney after its occurrence,- as he has always done.Much more can be furnished in support.

Judge Benjamin has repeatedly stated that,being in full charge of this consolidated equity case,he is free to change his holdings at any time on new showings.That he has now denied to us,in his administration of this single case,by refusing to hear or receive,and by surprise retractions andself-denials.

There can be no question that Mr.Dupont has been going through a winding course of manipulation of this case,all with one end in view,- effecting a seizure of this rich prize,in one manner or another,without scruple. He has repeatedly(with the Judge) declaimed that there is to be no forfeiture to be suffered by anyone;and under such guise,has been manoeuvering to the last,to bring it about,however.

We aredelivering this letter;and a wait your demand for its formal implementation.

Respectfully,

Frances Ursini/s/
John R.Ursini/s/

(1-4-62)

P.S. Today we received more shocking news:Referee Steinbrink disclosed that he was informed that the restaurant-receipts tapes are no longer in existence,stating that the last hearing on December 14 recorded that ;but there was and had been no such assertion ever. The referee had ruled against the Grant to us,for the tapes'inspection, thus countermanding Judge Benjamin's ruling.When Dupont was then asked by counsel,his answer was "I don't hear you." Judge Benjamin had declared that possibly"$100,000" difference in the cost of redemption, to us, could be involved. Dupont added further,that the references to "tapes" may all be a mistake;and on hearing January 2,both Dupont and Schiff,denied they had ever been directed(which the Judge also affirmed) to submit tapes,until we produced their own direction on "Gottlieb and Schiff" stationary,referring to both the Court's direction and their consent; and of course, Dupont,also denying,had written similar letters. Claiming today he knew nothing about restaurant operations to enable him to avoid "tapes" commitments,he had only a few days before,to Benjamin J.,Given solemn assurance that "all rents" had been fully paid,as duo on the percentage basis called for by lease agreement. These rents of course were being paid to themselves.

P.P.S. The principal monied defendant Max Lander let a "cat out of the bag" to-day. He solemnly informed the Asst.Court Custodian,that "The Ursinis are finished.We own the property!" On each critical occasion in the past years,he has similarly uncontrollably quoted his counsel Dupont or Gottlieb! Lander is the "$ 40,000-slush-fund" defendant referred to above.

A 417

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department, at the Borough of Brooklyn, on the 19th day of December, 1962

Present:

Hon. George J. Beldock, P.J.
" Henry L. Ughetta
Philip M. Kleinfeld
Marcus G. Christ,
Arthur D. Brennan,
L. Barron Hill
Samuel Rabin
JAMES D. McNIAS

In the Matter

of

The Establishment of a Judcial Inquiry on Professional Conduct, with respect to Attorneys and counsellors at Law in or Having their Offices in or Practising Law in Kings County

An order having been made by this Court on the 21st day January, 1957, upon the Petition of the Brooklyn Bar Association directing that a Judicial Inquiry and Investigation be made with rerespect to alleged illegal, corrupt or unethical practises AND CONDUCT PREJUDICIAL TO THE ADMIMistration of justice, by certain attorney and counseloors at law, and other persons acting in concert with them;

And the Court having heretofore directed that said Judicial Inquiry and Investigation shall terminate at the close of business on January 31, 1963, at which time, Hon. Edward G. Baker, the Justice heretofore designated by this Court to conduct said Inquiry and Investigation shall make andfile with this Court his report setting fobth his proceeding and his findings and his recommendations;

And it appwaring from the intermediate reports, heretofore subm mitted and filed by said Justice, that the administration of justice so eequires.

NOW THEREFORE, pursuant to the authority vested in this Court by law (Constitution Article VI, Section 4, Judiciary Law Sections 90, 86) xx it is hereby

ORDERED that effective February 1, 1963, there is hereby extablished a Judicial Inquiry on Professional Conduct, to receive and investigate and report to the Court from time to time, all complaints from whatver source received, with respect to:-

(a) Any improper practises and abuses by attorneys and counsellors at law residing in and having their offices in or practising law in Kings County.

(b) any corrupt or unethical practises by attorneys and counsellors at law, residing in or having their offices in or practising law in Kings County, in the soliciation of retainer in the subsequent prosecution and disposition of claims and actions, and in any other matter.

(c) Any and all other practises by attorneys and counseloors at law, residing in or having their offices in or practising law in Kings County, involving professional misconduct, fraud, deceit, corruption, and crime, ; and

(d) Any and all conduct prejudicial to the administration of justice by attorneys and counsellors at law, residing in or having their offices in or practising law in Kings County; and it is

FURTHER ORDERED that in addition to his other assignments, such "Judicial Inquiry on Professional Conduct" shall be conducted by the Honorable Edward G.Baker, a Justice of the Supreme Court at an ADDITIONAL SPECIAL TERM of the Supreme Court, Kings County, with full power to compel the attendance of witnesses, their testimony under oath, and the production of all relevant books, papers and records; and it is

A 418 FURTHER ORDERED that such additional Special Term of the Supreme Court in and for Kings County be and it is hereby is appointed to be held commencing February 1, 1963 at the Courthouse in Brooklyn, or at such other places as the Justice assigned may deem nebessary or advisable, and that the Justice, Edward G.Baker, be and he hereby is assigned to hold such additional Special Term,; and it is

FURTHER ORDERED that Solomon A.Klein, an attorney and counsellor at law of 375 Pearl Street, Brooklyn, New York, be and he is hereby appointed at a salary of $10,000 per annum, to aid the said Justice, and any other Justice who may hereafter be assigned in the conduct of the said "Judicial Inquiry on Professional Conduct" pursuant to the provisions of the Judiciary Law (Section 90, subdivisions 6 and 7) with power (1) to appoint subject to the approval of this Court, such qualified assistants as he deems necessary and (2) to incur such other expenses as are necessary to the proper performance of his duties. subject however to the budgetary limitations heretofore approved by this Court; and it is

FURTHER ORDERED that for the purposes of facilitating the work of the "Judicial Inquiry on Professional Conduct", the Clerk of this Court is hereby authorised to make available to said "Judicial Inquiry on Professional Conduct", upon request, statements of retainer filed in this Court, prior to July 1, 1960 by attorneys and counsellors at law, residing in or having their offices in or practising law in Kings County, and the Judicial Conference of the State of New York be and it hereby is also authorised to make available to said "Judicial Inquiry on Professional Conduct", upon request, all statements filed with it on and after July 1, 1960, by attorneys and counsellors at law residing in or having offices in or practising law in Kings County; and it is

FURTHER ORDERED that all pending and undetermined matters before the present Judicial Inquiry and Investigation at the close of business on January 31, 1963, be and they are hereby are transferred to the Judicial Inquiry on Professional Conduct, hereby established for appropriate action; and it is hereby

FURTHER ORDERED that for the purpose of protecting the reputations of innocent persons, all proceedings by said "Judicial Inquiry on Professional Conduct" shall be conducted in private, pursuant to the provisions of the Judiciary Law (Section 90, subdivision 10) that all the facts, testimony and information adduced and all papers relating to the "Judicial Inquiry on Professional Conduct", except this Order, shall be sealed and be deemed confidential; ~~and that none of such facts, testimony and information and none of the papers and proceedings herein, except this Order, shall be sealed and deemed confidential~~; and that none of such facts, testimony and information, and none of the papers and proceedings herein shall be made public or otherwise divulged until the further order of this Court; and it is

Further Ordered that from time to time, during said Judicial Inquiry on Professional Conduct, the Justice assigned thereto shall make and file with this Court, his intermediate reports setting forth his proceedings, his findings and his recommendations; and it is

FURTHER ORDERED that pursuant to Section 90 Subdivisions 6 and 7 of Judiciary Law, the expenses of said "Judicial Inquiry on Professional Conduct" be and they are hereby are made a charge upon Kings County.

ENTER

George J.Beldock
Presiding Justice
Appellate Division
Supreme Court
Second Judicial Department